

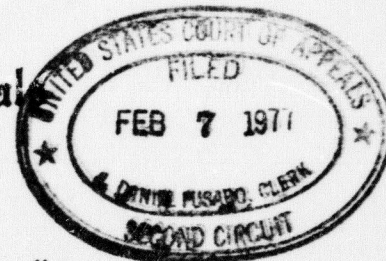
***United States Court of Appeals
for the Second Circuit***



JOINT APPENDIX

ORIGINAL
76-7632

In The
United States Court of Appeals
For The Second Circuit



JOSEPH A. LOUGHRAN, JR.,
Plaintiff-Appellant,

-against-

MICHAEL J. CODD, individually, as Police Commissioner of the Police Department of the City of New York, and as Executive Chairman of the Board of Trustees of the Police Pension Fund, Article II, GEORGE McCLANCY, individually, and as Administrative Officer, Medical Section, New York City Police Department, STANLEY AUGUST, individually, and as District Surgeon of the New York City Police Department.
Defendants-Appellees.

B
P/S

JOINT APPENDIX

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DIST/OFFICE	YR	NUMBER	MO	DAY	YEAR	OTHER	NUMBER	DEM.	YR	NUMBER
76C		770								
207/1	76			76	5	44	250		0712	P
PLAINTIFFS						DEFENDANTS				

APPEAL**MISHLER**

LOUGHRAN, JR., JOSEPH A.

Codd, MICHAEL J. et al

JOSEPH A. LOUGHRAN, JR.

MICHAEL J. Codd, INDIVIDUALLY, AS POLICE COMMISSIONER OF THE POLICE DEPARTMENT OF THE CITY OF NEW YORK AND AS EXECUTIVE CHAIRMAN OF THE BOARD OF TRUSTEES OF THE POLICE PENSION FUND, ARTICLE II, GEORGE McCLANCY, INDIVIDUALLY, AND AS ADMINISTRATIVE OFFICER, MEDICAL SECTION, NEW YORK CITY POLICE DEPARTMENT, STANLEY AUGUST, INDIVIDUALLY, AND AS DISTRICT SURGEON OF THE CITY OF NEW YORK POLICE DEPARTMENT

CAUSE

28 USC 1551 - 42 USC 1983, 1935 for injunctive relief restraining respondents' enforcement of certain Police Department Rules & Procedures pursuant to which plaintiff is imprisoned in his home. Seeks: \$250,000.00

ATTORNEYS

For PLNTFF:
 HAROLD B. FONER
 IRA LEITEL OF COUNSEL
 138 MONTAGUE STREET
 BROOKLYN, NEW YORK 11201
 624-5775

BEST COPY AVAILABLE

☐ CHECK
 HERE
 IF CASE WAS
 FILED IN

DATE

FILING FEES PAID
 RECEIPT NUMBER

C.D. NUMBER

STATISTICAL CARDS

CARD DATE MAILED

J6-5

76C 770

LOUGHRAN, JR.

vs

Codd

et al

PROCEEDINGS

DATE	NR	PROCEEDINGS
4-28-76		COMPLAINT FILED. NO SUMMONS ISSUED. (1) (cg)
5-4-76		BY MISHLER, CH. J. - Order to show cause ret. 5-7-76 at 11:30 AM why an order should not issue or the Court take such other action to grant plaintiff preliminary and permanent injunction etc. filed. (2) (cg)
5-7-76		Annexed affidavit of personal service. Before MISHLER, J. - Case called on OSC for preliminary injunction Motion argued in part and adjd to 5-21-76
5-21-76		Notice of motion ret. 6-4-76 with memo of law and rule 9(g) statement for summary judgment filed. (3/4/5)
5-21-76		Pltff's memo of law for a preliminary injunction filed. (C)
5/21/76		Before MISHLER, J. - Case called - Motion adjd to 6/4/76 at 11:30 A.M.
6-3-76		Notice of cross motion and memorandum of law for summary judgment in favor of pltff, ret 6-11-76 at 11:30 A.M. filed. (7/8)
6-4-76		Before MISHLER, CH. J. - Case called. Motion for injunction argued. Decision reserved.
6-4-76		Before MISHLER, CH. J. - Case called. Defts motion for summary judgment submitted. Decision
7-6-76		Letter dtd 6-30-76 to J. Mishler from Ira Leitel filed. (9)
7-8-76		Letter dtd 7-2-76 from M. Cecere to Judge Mishler filed. (10)
7-19-76		Letter dtd 7-13-76 to J. Mishler from Ira Leitel filed. (11)
9-16-76		Copy of letter dtd. 9-15-76 from J. Mishler to Corp Counsel re: defts motion for summary judgment on 10-1-76 etc., filed. (12)
9-24-76		Pltff's general rule 9(g) statement filed. (13)
10-1-76		Before MISHLER, J. - Case called for summary judgment. Motion argued and decision reserved
10-27-76		Pltff's demand for jury trial filed. (14)
11-10-76		Affidavit in opposition to demand for jury trial. (15)
11-10-76		By MISHLER, J. - Memo and order granting defts motion for summary judgment and denying pltff's cross-motion filed and directing the clerk to enter judgment in favor of defts and against pltff, dismissing the petition filed. (16)
11-1-76		Letter dtd. 11-1-76 that pltff take nothing of the defts and that if summary judgment is granted, the pltff's cross-motion for summary judgment is denied and the complaint is dismissed (17)
12-3-76		Notice of appeal of pltff filed. (18)

PLAINTIFF'S ORDER TO SHOW CAUSE

(Filed May 4, 1976)

(pp. 3a-5a)

3a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JOSEPH A. LOUGHRAN, JR.,

Plaintiff,

- against -

MICHAEL J. CODD, individually, as
Police Commissioner of the Police
Department of the City of New York,
and as Executive Chairman of the
Board of Trustees of the Police Pen-
sion Fund, Article II, GEORGE McCLANCY,
individually, and as Administrative
Officer, Medical Section, New York City
Police Department, STANLEY AUGUST, in-
dividually, and as District Surgeon of
the New York City Police Department.

Defendants.
-----X

ORDER TO SHOW CAUSE

Civil Action No.

76 civ. 770

Upon the Complaint, duly verified the 27 day of April, 1976 and
the exhibits annexed thereto, and the Affidavit of JOSEPH A. LOUGHRAN, JR.,
sworn to April 27 1976, it is

ORDERED, that the defendants show cause before this Court in Room
5, of the United States Courthouse for the Eastern District of New York,
225 Cadman Plaza East, Brooklyn, New York, on the 7 day of ^{May}~~April~~, 1976 at
11:30 AM, or as soon thereafter as counsel can be heard, why an order should
not issue or the Court take such other action as shall grant the plaintiff
herein the following relief:

(1) A preliminary and permanent injunction restraining and preventing defendants, their agents, servants, employees and successors in office and all other persons in active concert with them from enforcing, executing and administering the provisions of the Patrol Guide and Rules and Regulations of the New York City Police Department referred to in the Verified Complaint herein, so as to deny plaintiff life and liberty without due process of law in violation of the Fourteenth Amendment to the United States Constitution;

(2) A declaratory judgment declaring that the policies and practices complained of herein, as set out in the Verified Complaint, are arbitrary and unreasonable and deprive plaintiff of rights, privileges and immunities secured by the Fourteenth Amendment to the Constitution of the United States.

The named plaintiff seeks a preliminary injunction and other relief on the grounds that:

(1) He is suffering irreparable injury in that he is confined and imprisoned in violation of his constitutional rights, and not pursuant to a judgment of a State or Federal Court.

(2) The issuance of a preliminary injunction for the named plaintiff will not cause inconvenience or loss to the defendants but will prevent further irreparable injury to the plaintiff;

(3) The regulations and practices which require that plaintiff be con-

fined to his residence at the order of the Police Department's District Surgeon and at the whim and caprice of the Department's Medical Section while on sick report violate plaintiff's rights under the Constitution of the United States;

(4) Plaintiff has no adequate remedy at law, as set forth more fully in the Verified Complaint attached hereto.

(5) *No previous application for the relief requested herein has been made to this or any other Court.*

IT IS FURTHER ORDERED, that service of this Order on defendants on or before the 30 day of April *at or before 1 P.M.* 1976 shall be deemed good and sufficient service.

Is/ Jacob Mshken

United States District
Judge for the Eastern
District of New York

Dated: Brooklyn, New York
April 28 1976

VERIFIED COMPLAINT
(Filed April 28, 1976)

(pp.6a-19a)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

JOSEPH A. LOUCHRAN, JR.,

Plaintiff,

- against -

MICHAEL J. CODD, individually, as
Police Commissioner of the Police
Department of the City of New York,
and as Executive Chairman of the
Board of Trustees of the Police Pen-
sion Fund, Article II, GEORGE McCLANCY,
individually, and as Administrative
Officer, Medical Section, New York City
Police Department, STANLEY AUGUST, in-
dividually, and as District Surgeon of
the New York City Police Department.

Defendants.

-----X

COMPLAINT FOR DECLARATORY
JUDGMENT, INJUNCTIVE RELIEF
AND DAMAGES

Civil Action No.

Civ. _____

I

1. Plaintiff JOSEPH A. LOUCHRAN, JR., seeking injunctive and declaratory relief, brings this action founded upon Title 42, United States Code, Sections 1983 and 1985, this being a suit in equity authorized by law, and Rule 57 of the Federal Rules of Civil Procedure, to be brought to redress the deprivation under color of law of rights, privileges and immunities secured by the Constitution and laws of the United States. Sought to be redressed here is the fundamental right not to be denied life and liberty without due process of

law guaranteed by the Fourteenth Amendment to the Constitution of the United States. By this action plaintiff seeks to prevent defendants while acting under color of law, and under color of their authority as police officials of the City of New York from continuing his confinement or the arbitrary and punitive conditions of such confinement under threat of fine, job suspension and dismissal, and denial of life and liberty upon the grounds that such imprisonment constitutes a gross violation of his constitutional rights guaranteed by the due process clause of the Fourteenth Amendment to the Constitution of the United States.

II

JURISDICTION

2. The jurisdiction of this Court is invoked pursuant to the provisions of Title 28, United States Code, Sections 1343(3) and (4), which provide for original jurisdiction of the District Courts in suits authorized by Title 42, U.S. Code, Section 1983, and by Title 28, United States Code, Sections 2201, 2202.

III

PLAINTIFF

3. JOSEPH A. LOUGHRAN, JR., is an adult citizen of the United States and of the State of New York, residing in the City of New York, County of Kings,

at 2171 East 33rd Street, Brooklyn, New York 11234. Plaintiff was permanently appointed as a Police Officer in the Police Department of the City of New York (hereinafter referred to as "the Department") on February 15, 1963, with Shield #10047, and is presently assigned to the Department's Restricted Duty Unit on sick report. Plaintiff is married, and the father of three children ages 5, 4 and 2 years old. Pursuant to the terms of a written separation agreement, plaintiff's wife and all issue of their marriage live separate and apart from the plaintiff.

IV

DEFENDANTS

4. Defendant MICHAEL J. CODD is the duly appointed Police Commissioner of the Department, and is responsible under the laws of the City of New York for the supervision of the Department and the administration of the Department's Rules and Procedures. Pursuant to Sections B18-42.0 and B18-43.0 of the Administrative Code of the City of New York (hereinafter referred to as "the Code"), defendant Codd is empowered to apply for medical examinations of members of the Department to determine their physical and mental capacity for the performance of duty so as to effectuate their retirement for non-service or service connected disability.

5. Defendant GEORGE MCCLANCY is a Police Captain and Administrative Officer of the Department's Medical Section. He is responsible under the De-

partment's Patrol Guide and Rules and Procedures for enforcing, administering and supervising the conditions of confinement placed upon a police officer while on sick report.

6. Defendant STANLEY AUGUST is a Department District Surgeon. He is responsible under the Patrol Guide and the Rules and Procedures of the Department for granting permission to a member of the force on sick report to leave his residence or place of confinement, and for defining on Form M.B.5 (Permission to Leave Residence While on Sick Report) the day(s), date(s) and time(s) for which permission has been granted.

V

STATEMENT OF CLAIM FOR RELIEF

7. After successfully completing the Department's program of training and instruction at the Police Academy, plaintiff was assigned in July, 1963 to the 61st Precinct in Kings County for foot patrol duty. While so assigned, he was injured in May, 1965 while attempting, with his own body, to break the fall of a man who had jumped from a train tressel. Plaintiff was treated at a hospital for injuries sustained to his back, and released. This injury was granted line-of-duty designation by the Department.

8. In 1970, while assigned to the Manhattan North Narcotics Division of the Department, plaintiff's back was injured in a non-service connected

automobile accident, which required hospital treatment. As a result, he was on sick report from his duties with the Department from December 12, 1970 until January 21, 1971.

9. In June, 1971, while assigned to the 72nd Precinct, plaintiff again reinjured his back by falling down a flight of stairs.

10. Owing to the discomfort and pain plaintiff was enduring as a result of these injuries, the Department's District Surgeon, Dr. Robinson, assigned plaintiff to light or restricted duty at the Department's Motor Transport Division in March, 1972.

11. Plaintiff remained assigned to restricted duty from March, 1972 until February, 1975. During such period of time, plaintiff worked when possible and was placed on sick report when unable to so do.

12. Pursuant to the order of the Department's Deputy Chief Surgeon, Dr. Gitler, plaintiff was examined in February, 1973 and in November, 1974 by Dr. William Fielding, a Department Honorary Orthopedic Surgeon.

13. Upon information and belief, Dr. Fielding recommended to the Department's Medical Section that a myelogram be performed on plaintiff with possible spinal fusion thereafter.

14. In February, 1975, plaintiff, owing to his physical condition, was

placed from restricted duty to sick report. He, thereafter, remained so assigned.

15. Pursuant to Section 22/2.1 of the Department's Rules and Procedures, which provides:

"A member of the force on sick report shall not leave his residence or place of confinement except by permission of his district surgeon or for the purpose of visiting a police surgeon. The district surgeon concerned shall prepare Form M.B.5 (Permission to Leave Residence While on Sick Report) in quadruplicate, indicating the day(s), date(s) and time(s) for which permission has been granted. Permission shall not be granted for a period longer than one week. Before granting a renewal of such authorization the district surgeon shall reexamine the necessity therefor. M.B.5 shall be prepared each time permission is granted or renewed "

and Section 120-1, page 1, para. 5 of the Department's Patrol Guide, which provides:

"When sickness or injury would prevent the proper performance of duty: Remain at residence or other authorized location "

The defendant Dr. Stanley August, then plaintiff's District Surgeon, issued an M.B.5 (Permission to Leave Residence While on Sick Report) permitting plaintiff to leave his apartment only from 12 - 3 P.M., seven days a week.

16. In March, 1975, while on sick report, plaintiff applied to the Office of Vocational Rehabilitation of The University of the State of New York, State Education Department, for rehabilitative training consistent with his disability. (Exhibit A, annexed hereto and made a part hereof). After examination by Dr. Russell Gee, an Orthopedic Surgeon in the Office of Vocational Rehabilitation, plaintiff was accepted into a training and rehabilitative program.

17. In April, 1975, plaintiff applied to the Department pursuant to Sections B18-42.0 and 43.0 of the Code for service or non-service connected disability retirement. He was examined by the Department's Medical Board pursuant to such application in October, 1975. Such application is still pending without any determination thereon.

18. In August, 1975 plaintiff received a Department complaint for having been outside of his apartment from 6:30 - 7:45 P.M. Plaintiff was, in fact, at that time being treated in the office of his private Orthopedic Surgeon, Dr. John F. Carrington. These charges against plaintiff were later dismissed in the Department's trial room.

19. On October 7, 1975, James A. Walsh, Recording Secretary of the Patrolmen's Benevolent Association of the City of New York, Inc., wrote to the defendant Dr. August requesting that the terms of plaintiff's M.B.5 be extended since "being confined for this length of time is not in the best interest of this officer or his family." (Exhibit D, annexed hereto and made a part hereof).

20. Upon information and belief, the defendant August rejected the request, on plaintiff's behalf, made by Mr. Walsh, for an easing of the terms of plaintiff's confinement. Such decision was prompted, upon information and belief, by the Department's arbitrary, discriminatory and unlawful practices regarding sick leave supervision contained in Exhibits C and D, annexed hereto and made a part hereof, which were prepared and issued by the defendant Codd.

21. On Sunday, October 19, 1975, plaintiff left his apartment to attend local Church services from 10:30 A.M. - 1:30 P.M. He called the Department's Medical Section upon his return from services to explain where he had been. On October 24, 1975 plaintiff received a telephone call from a Sergeant McGovern, of the Department's Medical Section, threatening him with a Department complaint for having left his apartment to go to morning Church services. Upon information and belief, such action was taken at the orders of the defendant McClancy.

22. In late 1975, plaintiff personally appealed to defendant August for a change in the terms of his confinement pleading that he "couldn't live this way" any longer. As a result of this personal plea, defendant August changed the terms of plaintiff's M.B.5 to allow him an additional period of liberty from 6 - 8 P.M., for meals.

23. As a result of an EMG and nerve conduction studies performed upon plaintiff at the Downstate Medical Center, Dr. Reza Khatib, a Neurosurgeon, recommended that a myelogram be performed to discover whether there was a "lumbar radicular syndrome due to herniated disc L4-L5." (Exhibit F, annexed

hereto and made a part hereof).

24. Pursuant to Dr. Khatib's recommendation, plaintiff was admitted to the Brooklyn Hospital on January 5, 1976. A lumbosacral myelogram, Dr. Khatib reported, "showed a very small midline epidural defect at L4-L5. It was believed that this small defect would explain the patient's symptomatology, but not indicative of surgical intervention." (Exhibit F, annexed hereto and made a part hereof). Plaintiff was discharged from the Brooklyn Hospital on January 10, 1976.

25. On January 13, 1976, while at home pursuant to the terms of his confinement and recovering from the myelogram, he was told by the Department's Medical Section, at the orders of the defendant McLancy, that he was to be served with a Department complaint for not having notified the Medical Unit's Sick Desk that he was entering the hospital. Plaintiff had, however, notified the defendant August that he was entering the hospital at the request of his physician, Dr. Carrington.

26. On March 17, 1976 plaintiff received a Department complaint for having been out of his apartment for 20 minutes, from 3:25 P.M. - 3:45 P.M. on February 14, 1976. These charges are pending, and scheduled for trial on May 4, 1976. During the 20 minutes in question, plaintiff had left his apartment to buy aspirin.

27. On March 11, 1976 the plaintiff received a phone call from Sergeant

Howard Dell of the Department. Sergeant Dell informed the plaintiff that pursuant to the order of the defendant McClancy, the hours of his M.B.5 had been limited to from 1-2 P.M. and 7-8 P.M., to commence immediately. Upon information and belief, such action was taken by the defendant McClancy unilaterally, without prior consultation with medical authority and in order to penalize and punish the plaintiff. That same day plaintiff was visited at home by members of the Department's Medical Section, at the orders of the defendant McClancy, in order to verify that plaintiff was conforming to those new, unconscionable terms of imprisonment. Since that time and, again, at the orders of the defendant McClancy, teams of police officers have been stationed outside of plaintiff's home to insure that he does not breach the terms of his 22 hour daily imprisonment, causing plaintiff great embarrassment, with neighbors and friends, and yet further emotional distress.

28. On March 12, 1976 the defendant August, pursuant to defendant McClancy's orders and in violation of his own responsibilities as a physician and Department District Surgeon, formally annulled plaintiff's prior M.B.5, which had permitted him to leave his residence for a total of 5 hours daily, and issued a new M.B.5, permitting plaintiff to leave his residence a total of 2 hours daily. Plaintiff complained to Dr. August that he couldn't live under such conditions of imprisonment. Dr. August, however, in clear violation of his duties and responsibilities under the Department's Rules and Procedures, stated that any further changes in plaintiff's M.B.5 would have to come from the defendant McClancy. Plaintiff asked the defendant August for permission to visit his children on March 14th, but such request was refused.

29. On March 18, 1976 plaintiff presented a letter written by Dr. Carrington to the defendant McClancy. In this letter, Dr. Carrington noted that plaintiff had been under his care since February, 1975, and outlined plaintiff's medical history. He stated that in his opinion plaintiff "is disabled and unable to work." "Both myself and Dr. Khatib, Neurosurgeon, recommend conservative therapy including ... swimming daily and walking daily." (Exhibit G, annexed hereto and made a part hereof). Based on this letter, plaintiff requested that the terms of his former M.B.5 be reinstituted so as to allow him an opportunity for walks as a form of therapy. Without prior consultation with Drs. Carrington or August or acquiring any medical opinion, the defendant McClancy summarily denied such request.

30. After Drs. Carrington and August had conferred, plaintiff visited Dr. August on April 9, 1976 and agreed to attempt a limited duty assignment consistent with his medical and rehabilitative needs. Pursuant to such agreement, plaintiff reported to work on April 12, 1976 at a duty assignment that he hoped would not be inconsistent with his disability. However, the Department would not honor the understanding nor permit plaintiff an assignment consistent with any rehabilitative schedule.

31. As a result of the Department's refusal to permit plaintiff an assignment consistent with his rehabilitative needs or disability, on April 14, 1976 the defendant August returned plaintiff to sick report from limited duty assignment under the same terms of confinement: again imprisoning plaintiff in his home 22 hours daily, seven days a week.

32. On April 19, 1976, plaintiff called the Medical Section for permission to leave his apartment that evening in order to attend an Alcoholics Anonymous therapy session. Upon information and belief, such request was refused at the orders of the defendant McClancy. Plaintiff had been participating in both the Department's Monseignor Dunn's Program and Alcoholics Anonymous, since December, 1974.

33. There has been constant harassment and surveillance of plaintiff at the orders of the defendants. As a result, plaintiff remains confined and imprisoned under threat of heavy fine, suspension and dismissal from the Department.

34. Plaintiff has been denied the opportunity to participate in programs of training and vocational rehabilitation by the terms of his unlawful and punitive confinement. Further, plaintiff's imprisonment has deprived him of the opportunity to engage in his physician's program of physical therapy, thus retarding or prejudicing his chances for recuperation and rehabilitation.

35. Plaintiff has been and is being denied his right to life and liberty; he has been falsely imprisoned, vindictively, by the named defendants without due process of law, there having been no arrest of plaintiff either on probable cause or judicial warrant, no charges brought or allegations made, no conviction or finding recorded by any court of law and without any judicial order, to plaintiff's damage in the sum of \$250,000.00.

IRREPARABLE INJURY

35. Continued enforcement of the unreasonable, arbitrary and abusive policy and practice authorized by the Department's Rules and Procedures and as capriciously and vindictively administered and enforced by the named defendants herein, pursuant to which plaintiff has been confined and imprisoned without due process of law, has resulted in continuing and severe irreparable injury to the plaintiff and is in violation of plaintiff's constitutional and civil rights.

VII

PRAYER FOR RELIEF

36. WHEREFORE, plaintiff respectfully prays, upon the filing of this verified complaint, that this Court:

A) Assume jurisdiction of this cause pursuant to Title 28, U.S.C., Sections 1343(3) and (4) to determine the controversy;

B) Enter a preliminary and permanent injunction restraining and preventing defendants, their agents, servants, and employees and successors in office and all other persons in active concert with them from enforcing, executing and administering the provisions herein referred to of the Patrol Guide and Rules and Procedures of the New York City Police Department so as to deny plaintiff life and liberty without due process of law in violation of the Fourteenth Amendment to the United States Constitution;

C) Enter a declaratory judgment pursuant to Title 28, U.S.C., Sections 2201, 2202 and Rule 57 of the Federal Rules of Civil Procedure, declaring that the policies and practices complained of herein are arbitrary and unreasonable and deprive the plaintiff of rights, privileges and immunities secured by the Fourteenth Amendment to the Constitution of the United States;

D) Award plaintiff the damages suffered by him as a proximate result of defendants' unlawful actions; and

E) Grant to plaintiff his costs, reasonable attorneys' fees, and such other relief as may be proper.

HAROLD E. FENER
IRA LEITEL, of Counsel

Attorneys for Plaintiff

188 Montague Street
Brooklyn, New York 11201
(212) 624 - 5775

State of New York,
County of Kings,

JOSEPH A. LOUGHRAN, JR., being duly sworn, deposes and says: Deponent is the plaintiff in the within action; deponent has read the foregoing complaint and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true.

JOSEPH A. LOUGHRAN, JR.

Sworn to before me this
day of April, 1976.

IRA LEITEL
Notary Public, State of New York
No. 31-433473
Qualified in New York County
Commission Expires 12-31-2019

EXHIBITS ANNEXED TO FOREGOING VERIFIED COMPLAINT

EXHIBIT A - RESPONSE TO APPLICATION FOR REHABILITATION TRAINING
THE UNIVERSITY OF THE STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT

20a

OFFICE OF VOCATIONAL
REHABILITATION
TWO WORLD TRADE CENTER
ROOM 3751
NEW YORK, NEW YORK 10047
TEL. 488-4235

March 18, 1975


Mr. Joseph A. Loughran
5005 Avenue N
Brooklyn, N.Y. 11234

Dear Mr. Loughran:

Your application for service has been passed to me in order that I may discuss with you possible work opportunities or training plans or such other assistance as you may require. I want to confer with you about this and help you to work out a plan in your behalf.

I am making a definite appointment below for this interview. Please be here at that time. If you cannot report for this interview, please advise me promptly.

Very truly yours,


Emanuel Plutzik
Rehabilitation Counselor

Appointment for:

Continuity
April 9, 1975
10:30 AM

RO701 (7/71)

EXHIBIT A

21a

EXHIBIT B - LETTER FROM JAMES J. WALSH TO STANLEY AUGUST,
M.D. DATED OCTOBER 7, 1975

October 7, 1975

Stanley August, M.D.
1590 East 19th Street
Brooklyn, N.Y.

Dear Doctor August:

Doctor Clarence Robinson, Chief Surgeon has
advised me of his letter to all surgeons as of
November 1, 1974.

Mr. Joseph A. Loughran, Jr., a patient of
yours, has been in contact with this office con-
cerning a M.B. #5 while on sick report.

If in your opinion, exercise will not be
harmful to him, I would request you issuing a
M.B.#5. As you know, this officer has been on
sick report for a long period. I am sure you
will agree being confined for this length of
time is not in the best interest of this officer
or his family.

Sincerely,

James J. Walsh
Recording Secretary

km

EXHIBIT B

EXHIBIT C - POLICE DEPARTMENT DIRECTIVE DATED NOVEMBER 29, 1972

22a

POLICE DEPARTMENT
CITY OF NEW YORK

T.O.P. 346

November 29, 1972

TO ALL COMMANDS

Subject: SICK LEAVE SUPERVISION

1. Pursuant to a Collective Bargaining Agreement between the Patrolman's Benevolent Association and the City of New York, Patrolmen on sick leave because of:

- a. Heart condition
- b. Broken limb
- c. Post-surgical convalescence or similar prolonged illness, henceforth will not be the subject of telephone calls or visits by the Medical Section for the period of convalescence determined by a District Surgeon, and indicated on M.B. 5 (Permission to Leave Residence While on Sick Report).

2. They will comply, however, with all directives of a Surgeon and the Commanding Officer, Medical Section, and Department Rules and Procedures and appropriate orders. They will visit or contact their District Surgeon as directed and will not leave the confines of the resident Counties without approval of the Police Commissioner, nor engage in outside employment while on sick leave.

3. District Surgeons will verify the illness and advise the Commanding Officer, Medical Section of eligibility and recommended period of convalescence. The Sick Desk will maintain a record thereof.

4. The Collective Bargaining Agreement will not apply to members who (are)

- a. On sick leave other than the above.
- b. Designated 'Chronic Sick,' regardless of the illness or injury.
- c. Engage in activities which would tend to prolong or aggravate their disability.
- d. Fail to cooperate with a Surgeon or the Commanding Officer, Medical Section.
- e. Fail to comply with orders or directives.
- f. Violate any provisions of the Rules and Procedures.

5. Any provisions of the Rules and Procedures or Department orders which are in conflict are hereby SUSPENDED.

BY DIRECTION OF THE POLICE COMMISSIONER

MICHAEL J. CORD
Chief Inspector

CKL/JH: 64

Distribution:
ALL COMMANDS

EXHIBIT C

BEST COPY AVAILABLE

INACTIVE DATE:
Upon issuance of subsequent orders

497

T.O.P. 346

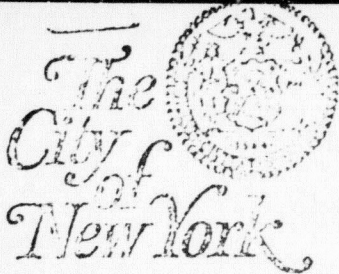


EXHIBIT D - POLICE DEPARTMENT DIRECTIVE DATED
POLICE DEPARTMENT
NOVEMBER 1, 1974
NEW YORK, N. Y. 10018

23a

November 1, 1974

From: Chief Surgeon
To: All District Surgeons
Subject: T.O.P. 348

1. Your attention is called to the provisions of T.O.P. 348 which is apparently being administered in a wide variety of ways. In some districts its existence is apparently not being acknowledged at all.
2. A copy of this directive is enclosed for your consideration. I should like to enumerate what I consider its salient features:
 - a. The Members of the Service whose reasons for being on sick leave fall into the stipulated categories may leave their homes for prolonged periods within each 24 hour period - at the discretion of their respective District Surgeons.
 - b. The District Surgeons must stipulate to the Members of the Service and to the Sick Desk what hours during each day the officer on sick leave will be at home in the event that he needs to be contacted. This can be as little as one or two hours of the 24 but must be identified.
 - c. If the Member of Service plans to be away from home during the "at home" hours on any given day he must request permission from his District Surgeon. In essence, the District Surgeon retains the responsibility for sick leave supervision.
 - d. At no time can the Member of the Service on Sick Leave depart from the geographical area of the five boroughs plus Nassau, Suffolk, Orange, Rockland, Putnam and Westchester Counties.
 - e. The question to be answered by District Surgeons in evaluating the need for invoking T.O.P. 348 under the circumstances specified is whether the granting of this permission will expedite or impede the recovery of the sick member.

Clarence G. Robinson
Clarence G. Robinson, M.D.
Chief Surgeon

CGR:pg
c.c. James Walsh

EXHIBIT D

EXHIBIT E - LETTER FROM REZA KHATIB, M.D. TO JOHN CARRINGTON, M.D. 24a
DATED DECEMBER 10, 1975

REZA KHATIB, M.D., P.C.
TEL. 212 - 464-4600

REZA KHATIB, M.D., F.A.C.S.
MEDICAL SUITE
121 DEKALB AVENUE
BROOKLYN, N. Y. 11201

REZA KHATIB, M.D., F.A.C.S.
86-74 PALERMO STREET
HOLLISWOOD, N. Y. 11423

December 10, 1975

Dr. John Carrington
5700 Avenue N
Brooklyn, New York

Re: Joseph A. Loughran, Jr.
4171 East 33rd Street
Brooklyn, New York

Dear Dr. Carrington:

This 34 year old left handed gentleman was seen on 12/8/75 with a history of accidents resulting in back injuries. He attributes the last onset to May 1975 after he attempted to break the fall of a man from a height of about 3'-4 feet on East 16th Street, Brooklyn, New York. During his attempt he injured his back and both legs when the man landed on top of him. He was taken to Coney Island Hospital where x-rays were taken and he was sent home.

In December 1970 he injured his lower back and neck in an auto accident.

In July 1971 he fell down a flight of stairs while carrying his son and a package in his arm. This aggravated his low back pain radiating to his left leg.

In February 1973 and November 1974 he was seen and examined by Dr. Fielding, an orthopedic surgeon, and in February 1975 he consulted you. Because of the aggravation of his low back pain, and pain in his legs, he stopped working in February 1975. Exercise was recommended and "injections" were given. He was also put on traction at home. Recently he was seen by Dr. Liebolt who discovered no pathology.

At the present time he is still experiencing pain in the lateral aspect of his left thigh, and knee, and constant pain in his lower back which aggravates by walking and standing for long periods. He is also experiencing spasm in his lower back. For the past 3 weeks he has been experiencing pins and needle sensation in the lateral aspect of his right knee, occasional neck pain and headache. About 2 weeks ago he had EMG and nerve conduction studies at Downstate Medical Center.

Examination: Positive findings -

- 1) Limitation of lower back movements.
 - 2) Restricted straight leg raising to about 60°.
 - 3) Questionable hypalgesia L5 dermatomic zone.
- There was no weakness, no reflex changes.

Impression: Possible lumbar radicular syndrome due to herniated disc L4-L5.

Recommendation: Myelogram.

Thank you for referring this patient to me.

Sincerely yours,
Reza Khatib
Reza Khatib, M.D.

EXHIBIT E

EXHIBIT F - LETTER FROM REZA KHATIB, M.D. TO JOHN CARRINGTON, M.D. 25a
DATED JANUARY 13, 1976

REZA KHATIB, M.D., P.C.

TEL. 212 - 464-4600

REZA KHATIB, M.D., F.A.C.S.
MEDICAL SUITE
121 DEKALB AVENUE
BROOKLYN, N. Y. 11201

REZA KHATIB, M.D., F.A.C.S.
86-74 PALERMO STREET
HOLLISWOOD, N. Y. 11423

January 13, 1976

John Carrington, M.D.,
5700 Avenue N
Brooklyn, New York

Re: Joseph A. Loughran, Jr.
2171 East 33rd Street
Brooklyn, New York

Dear Dr. Carrington:

Mr. Loughran was admitted to the Brooklyn Hospital on 1/5/76. He had a lumbosacral myelogram which showed a very small midline epidural defect at L4-L5. It was believed that this small defect would explain the patient's symptomatology, but not indicative of surgical intervention.

He was discharged on 1/10/76 - he was told to keep in touch with you, and continuation of conservative treatment is recommended.

Thank you again for referring this patient to me.

Sincerely yours,

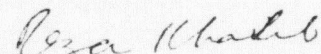

Reza Khatib, M.D.

EXHIBIT F

EXHIBIT G - LETTER FROM JOHN CARRINGTON, M.D. TO GEORGE McCLANCY 26a
DATED MARCH 18, 1976 (pp. 26a-27a)

TEL. 951-8999

PRACTICE LIMITED TO ORTHOPEDIC SURGERY

JOHN F. CARRINGTON, M. D.
5700 AVENUE N
BROOKLYN, N. Y. 11234

3 19 76

George McClancy

Dear Sir,

I am pleased to hear from you. I have
had a long time since
Oct 17, 1975 a major complaint
of low back pain & radiating
pain & numbness to the lower
extremities.

I went to a neurosurgeon
for evaluation & had a lumbar
dissection & a lumbar
dissection by Dr.

Dr. Henry was also
by Dr. Henry. Dr. Henry
later made a diagnosis of lumbar
disc protrusion & I have not
improved. He has recommended
physical therapy & manual therapy.

EXHIBIT G

JOHN F. CARRINGTON, M. D.
5700 AVENUE N
BROOKLYN, N. Y. 11234

At present I state my
of lower back pain & paraesthesia
& weakness of left hand & arm
and in my opinion is chronic
and unable to work at present.
Back injury & Dr Khatib,
Neurosurgeon, I cannot
remember things including
treated a time, Williams Back
Syndrome, training daily
living daily.
Also a L-5 fracture
noticed & got L-5 advised
as to live.

John F. Carrington

AFFIDAVIT OF JOSEPH A. LOUGHRAN, JR.

(Dated April 27, 1976)

(pp. 28a-33a)

28a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

JOSEPH A. LOUGHRAN, JR.,

Plaintiff,

- against -

MICHAEL J. CODO, individually, as
Police Commissioner of the Police
Department of the City of New York,
and as Executive Chairman of the
Board of Trustees of the Police Pen-
sion Fund, Article II, GEORGE McCLANCY,
individually, and as Administrative
Officer, Medical Section, New York City
Police Department, STANLEY AUGUST, in-
dividually, and as District Surgeon of
the New York City Police Department.

Defendants.

-----X

AFFIDAVIT

Civil Action No.

Civ. _____

STATE OF NEW YORK

SS.:

COUNTY OF KINGS

JOSEPH A. LOUGHRAN, JR., being duly sworn, deposes and says:

(1) That I am the plaintiff in the above captioned action and submit
this Affidavit in support thereof.

(2) That I have been confined to my home by order of the above named
defendants since February 1975, when I went on sick report from my duties as a

Police Officer in the New York City Police Department (hereinafter referred to as "the Department").

(3) That as a result of the restricted conditions placed on my confinement, which is not pursuant to a judgment or order of any State or Federal Court, I have suffered severe anxiety and depression which is affecting my well being and diminishing my chances for rehabilitation from my injuries.

(4) That due to injuries sustained by me in May, 1965, December, 1970 and June, 1971, I am unable to work on a regular basis and perform the full duties of my office. Although I have requested a limited duty assignment that would permit my rendering services to the Department while at the same time continuing my efforts to physically rehabilitate myself, the Department has been unable to offer me such assignment consistent with my disabilities.

(5) That in April, 1975 I applied to the Department, pursuant to Sections B18-42.0 and 43.0 of the Administrative Code of the City of New York for non-service or service connected disability retirement from the Department. Upon information and belief, although I was examined by the Department's Medical Board in October, 1975 relative to such application, no decision has yet been made on my application, which is still pending.

(6) That on March 11, 1976, the hours when I am allowed out of my apartment, were cut by more than half upon the unilateral order of the defendant McClancy, without physical examination nor consultation with my District

Surgeon, the defendant August. Upon information and belief, my permission to leave my apartment has been diminished to just two hours daily, seven days a week, as a form of administrative punishment and without justification or reason.

(7) That on August 6, 1975, I was served with charges and specifications by the Department for being outside of my residence from 6:30 to 7:45 p.m. I was, in fact, out of my residence at such time for treatment and consultation with my physician, Dr. John F. Carrington.

(8) I was threatened by members of the Department's Medical Section on October 19, 1975 with a Department complaint for having been out of my home on a Sunday, at 10:30 a.m. I was, in fact, out of my home at that time attending local Church services.

(9) On January 13, 1976 I was again threatened by members of the Department's Medical Section with a complaint for having been outside of my residence. I was, in fact, outside of my residence on that date in the Brooklyn Hospital recovering from a lumbosacral myelogram which had been performed at my doctors direction in the Brooklyn Hospital.

(10) That on March 17, 1976, I was served with charges and specifications by the Department for having been outside of my residence from 3:25 p.m. until 3:45 p.m. on February 14, 1976. I was, in fact, outside of my residence

on this date in order to buy medication at a local pharmacy. These charges are pending for trial before the Department on May 4, 1976. As a result of being out of my apartment for this purpose, I may be heavily fined, suspended from the Department and/or dismissed from the Department. As a result of this incident, the yet more restrictive conditions on my confinement, referred to in paragraph 6 of this Affidavit, were imposed by defendant McClancy as a form of punishment.

(11) That under fear of heavy fine and dismissal from the Department, I have confined myself to my apartment, where I live alone, since February, 1975, a period of more than 14 months, under the terms and conditions set by the named defendants herein.

(12) That in an effort to verify my confinement, I have been visited and called by members of the Department's Medical Section, upon the orders of the defendant McClancy, and followed closely by members of the Department on the occasions when I am permitted to leave my apartment. At times police teams will sit in unmarked automobiles outside of my home in order to verify the conditions of my confinement and secure the fact that I do not leave such apartment. This form of harrassment has caused me severe embarrassment and ridicule among my friends and neighbors.

(13) That I am ambulatory, notwithstanding my disability, and I am undergoing a great emotional strain at being imprisoned in my apartment. Al-

though my Orthopedic Surgeon, Dr. Carrington, has recommended a program of conservative therapy, including traction at home, swimming and walking daily, the defendants have refused to permit me to leave my residence in order to engage in such a limited program of rehabilitative therapy. This written recommendation of my physician was rejected by the defendant McClancy without consultation with my Orthopedic Surgeon, or other medical authority.

(14) In addition to my physical injuries, I have been recuperating from an alcoholic problem. This program of rehabilitation includes participation and attendance at meetings of Alcoholic Anonymous. At the direction of the defendant McClancy, the Department's Medical Section has denied me permission to attend such meetings and has thereby deprived me of the opportunity to rehabilitate myself from such disease.

(15) That, pursuant to my application, I had been accepted by the Office of Vocational Rehabilitation of the New York State Education Department for retraining. Due to the conditions of my confinement imposed by the defendants, I have been unable to take advantage of such programs and therefore my efforts to rehabilitate myself from my physical injuries have been severely prejudiced by the actions of the defendants.

(16) That I have not been charged with the commission of any crime, have not been arrested by lawful authority nor ordered confined by order of any Court, State or Federal. Nevertheless, I have been ordered imprisoned in my

home, cut off from my family and friends and the pursuit of life, liberty and happiness under the very real threat of fine, suspension and dismissal from the Department, in flagrant and cruel violation of my basic constitutional rights as a citizen of the United States.

(17) That while I have continued to receive my salary as a Police Officer from the Department, my contract and terms of employment with the Department obligate me to an eight hour work day, five days per week. Nevertheless, as a result of my physical disability, the defendants have seen fit to imprison me in my home 22 hours daily, seven days per week. The emotional stress and suffering that I have endured have become unbearable and the terms of my imprisonment are seriously impeding my chances for rehabilitation. I, therefore, pray that this Court will grant me the relief requested in the annexed verified complaint, and free me from my imprisonment.

JOSEPH A. LOUGHRAN, JR.

Sworn to before me this
day of April, 1976.

IRA LEITEL
Notary Public, State of New York
No. 314,021
Qualified to Notary Public
Commission Expires 12/31/77

DEFENDANTS NOTICE OF MOTION FOR SUMMARY

JUDGMENT (Dated May 20, 1976) (pp.34a-35a)

34a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JOSEPH A. LOUGHRAN, JR., :

Plaintiff, :

-against- :

MICHAEL J. CODD, individually, as
Police Commissioner of the Police
Department of the City of New York, :

: NOTICE OF MOTION FOR
SUMMARY JUDGMENT -

and as Executive Chairman of the
Board of Trustees of the Police Pen- :
sion Fund, Article II, GEORGE McCLANCY, :
individually, and as Administrative :
Officer, Medical Section, New York City :
Police Department, STANLEY AUGUST, in- :
dividually, and as District Surgeon of :
the New York City Police Department. :

: 76 Civ. 770
(J.M.)

Defendants. :

Motion by:

Defendants

Date, Time and Place
Returnable:

June 4
~~May 28~~, 1976 at 11:30 A.M. in Room
5 of the United States Courthouse,
225 Cadman Plaza East, Brooklyn,
New York, before Judge Jacob Mishler.

Relief Requested:

An order pursuant to Rule 56
of the Federal Rules of Civil
Procedure granting defendants
judgment as a matter of law.

Supporting Papers:

Affidavits of Michael S. Cecere,
sworn to May 19, 1976, George S.
McClancy, sworn to May 18, 1976,
Stanley August, sworn to May 8 ,
1976, and all prior papers and
proceedings herein.

Dated: May 20, 1976
New York, N.Y.

Yours, etc.

W. BERNARD RICHLAND
Corporation Counsel
City of New York
Attorney for Defendants
Municipal Building
New York, New York 10007
(212) 566-6377/2192

TO: Clerk of the Court

Harold B. Foner, Esq.
Attorney for Plaintiff
188 Montague Street
Brooklyn, New York 11201

AFFIDAVIT OF MICHAEL S. CECERE IN SUPPORT OF MOTION
(Sworn to May 19, 1976) (pp. 36a-37a)
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

36a

-----X
JOSEPH A. LOUGHRAN, JR.,

Plaintiff,

-against-

MICHAEL J. CODD, individually, as
Police Commissioner of the Police
Department of the City of New York,
and as Executive Chairman of the
Board of Trustees of the Police Pen-
sion Fund, Article II, GEORGE McCLANCY,
individually, and as Administrative
Officer, Medical Section, New York City
Police Department, STANLEY AUGUST, in-
dividually, and as District Surgeon of
the New York City Police Department,

Defendants.

:
:
:
: AFFIDAVIT IN SUPPORT
: OF MOTION FOR
: SUMMARY JUDGMENT

: 76 Civ. 770
: (J.M.)

-----X
STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

MICHAEL S. CECERE, being duly sworn, deposes and
says:

1. I am an Assistant Corporation Counsel in the
office of W. BERNARD RICHLAND, Corporation Counsel of the
City of New York, attorney for defendants and submit this
affidavit in support of defendants' motion for summary
judgment.

2. As can be clearly seen from the accompanying
affidavit of Captain George McClancy, Commanding Officer,
Medical Section, New York City Police Department (the Depart-
ment) the regulation which plaintiff challenges herein,
whereby he is restricted to his residence, unless permission
to leave is granted upon reasonable request, while on
unlimited sick report with full pay, is reasonable and
proper, both on its face and as applied.

3. The Department has a clear interest and, indeed, obligation to encourage such officers to return to at least restricted duty as soon as physically possible. The regulation has been promulgated and enforced pursuant to that interest and obligation.

4. Plaintiff has been on unlimited sick report with full pay since February, 1975. His Department District Surgeon has reported him capable of performing restricted duty as long ago as November, 1975, yet plaintiff has performed no work for the Department since that time.

5. The only possible exception to this has been his activities as head coach of the Department's football team. The obligation to encourage Officer Loughran to return to at least restricted duty is all the more imposing.

6. In view of the reasonableness of the Department regulation challenged herein, this Court should not intrude upon the Department's internal administrative affairs. The law is clear in that under such circumstances the Department should be accorded the widest latitude in conducting such affairs.

7. Defendants are therefore entitled to judgment as a matter of law and the complaint should be dismissed in all respects.

8. No prior application for the same or similar relief has been made herein.

Michael S. Cecere
MICHAEL S. CECERE

Sworn to before me this

19th day of May, 1976

J. J. Shah
Notary Public for the State of New York
My Commission Expires March 20, 1978

AFFIDAVIT OF GEORGE S. McCLANCY
(Sworn to May 18, 1976) (pp38a-44a)
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

38a

-----x
JOSEPH A. LOUGHRAN, JR., :

Plaintiff, :

-against- :

MICHAEL J. CODD, individually, as :
Police Commissioner of the Police :
Department of the City of New York, :
and as Executive Chairman of the :
Board of Trustees of the Police Pen- :
sion Fund, Article II, GEORGE McCLANCY, :
individually, and as Administrative :
Officer, Medical Section, New York City :
Police Department, STANLEY AUGUST, in- :
dividually, and as District Surgeon of :
the New York City Police Department, :

AFFIDAVIT

76 Civ. 770
(J.M.)

Defendants. :
-----x

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

GEORGE S. McCLANCY, being duly sworn, deposes
and says:

1. I have been in the service of the New York
City Police Department for 33 1/2 years, and am presently
Commanding Officer of the Department's Medical Section. In
that capacity, I am responsible for the administration and
supervision of members of the force while they are on
Sick Report, as well as setting the hours officers on Sick
Report may leave their residences, except where such leave
is for a medical purpose. In that case, the appropriate
district surgeon establishes these hours.

2. An officer on Full Duty is presumed physically
able to perform all duties required of a police officer,
including patrol duty and radio-motor patrol. An officer on
Restricted Duty is given an assignment with restrictions
recommended by his district surgeon, consistent with his

medical condition. Such an assignment involves a full day's work, generally a desk job during the day close to the officer's home.

3. An officer on Sick Report is considered too ill to perform even a limited assignment on Restricted Duty. He does no work, but continues to receive full pay and all benefits. In addition, an officer on Sick Report may be eligible for monthly Social Security payments.

4. Every member of the Force enjoys unlimited sick leave with full pay. Because of these very liberal sick leave benefits, the Department feels that it has an obligation to encourage men on Sick Report to return to at least Restricted Duty as soon as they are physically able to do so.

5. Therefore, the Department has established regulations wherein an officer on Sick Report cannot leave his residence or place of confinement "except by permission of his district surgeon or for the purpose of visiting a police surgeon." The terms of the Permission to Leave Residence While on Sick Report vary in each case, depending upon the officer's condition and the recommendation of his district surgeon.

6. In addition to the established hours in which an officer on Sick Report is permitted to leave his residence, an officer may receive permission to leave his residence for good cause at other times by telephoning the Central Sick Desk.

7. Plaintiff, age 35, was appointed to the Police Department February 15, 1963. In 1965 he suffered a line of duty back injury. On December 29, 1972 plaintiff was assigned to Restricted Duty with a diagnosis of low back syndrome. For all practical purposes, Police Officer

Loughran has performed 80 regular duty since July 1974. He is presently assigned to the Motor Transport Division.

8. Since February 6, 1975 plaintiff has been on virtually uninterrupted sick report and has, consequently, performed no duty at all for the Police Department. The only exceptions to this were in February and March, 1975, when he reported for Restricted Duty on two occasions only to return on sick report within two (2) days on both occasions. On April 13, 1976 he reported for restricted duty and objected to the proposed tour of duty. On April 14, 1976 he again returned to sick report where he remains to date. It is alleged by him that his recurrent back injury prevents him from performing any kind of work.

9. Pursuant to Department regulations, Officer Loughran while on sick report cannot leave his residence or place of confinement "except by permission of his district surgeon or for the purpose of visiting a police surgeon." Between February, 1975 (when plaintiff first went on continuous sick report) to March 11, 1976 he was granted permission to leave his residence ("M.B.5 hours") on a daily basis between the hours of 11:00 A.M. and 2:00 P.M. and 6:00 P.M. to 8:00 P.M. After March 11, 1976 this was reduced to two (2) hours a day as will be described, infra. In addition thereto he may receive permission to leave his residence for good cause at other times by telephoning the Central Sick Desk. Reasonable requests are invariably granted.

10. Since February, 1975, when the plaintiff went on sick report he has made twenty-one (21) requests of the Central Sick Desk for permission to leave his residence, of which eighteen (18) have been granted. Requests that have been granted have been for reasons such as to see his children; to attend a funeral of a former member of the

Department to attend a funeral of a member of the Department football team; to visit his lawyer; to appear at a Departmental trial as a witness; to attend a meeting of Alcoholics Anonymous; for meals; to visit his father in California Hospital, Brooklyn; to attend a P.B.A. Football Testimonial; to meet a real estate broker to view an apartment; and in May, 1975, to attend a Police Department football game at Hofstra University, Hempstead, Long Island.

11. Three Desk requests for permission to leave his residence were refused (out of twenty-one such requests) and the reasons for those requests were allegedly as follows:

(1) On April 16, 1976 plaintiff requested permission to leave his residence to take therapy. This request was refused because of (i) the lateness of the hour it was made (8:30 P.M.) and (ii) the day on which it was made (Good Friday);

(2) On April 19, 1976 plaintiff requested permission to attend a meeting of Alcoholics Anonymous. This request was denied as the Department had no record of his ever having attended such a meeting previously, or that he was ever a member of that group or any Department Counseling group. A similar request by the plaintiff has recently been granted.

(3) In February, 1976 I learned for the first time that Officer Loughran was the Head Coach of the Police Department Football Team. His name and picture appeared in a Department Bulletin at that time and he was so designated in the program for the team's next game in April. I directed that his permission to leave residence while on Sick Report ("M.B.5 hours") be reduced from 11:00 A.M. to 2:00 P.M. and 6:00 P.M. to 8:00 P.M. daily, to 1:00 P.M. to 2:00 P.M. and 7:00 P.M. to 8:00 P.M. daily, and I so informed the District Surgeon. This reduction became effective as of March 11, 1976.

On April 10, 1976, plaintiff requested permission to attend a Department Football game at Hofstra University which was refused. In view of the extended time he had been on sick report, as well as his activities as head coach of the football team, I believed he should be prevented from engaging in athletic activities which could prevent the performance of his police duties. Additionally, I believed his activities as head coach were inconsistent with an alleged totally disabling back condition he claimed to be suffering from. In fact, since November, 1975, Dr. Stanley August, District Surgeon for the Department indicated that Officer Loughran could perform some kind of restricted duty.

On April 18, 1976, plaintiff requested permission to see his attorneys in this case which was granted. A couple of days later plaintiff requested permission to accompany the Department football team to a game to be played in Atlanta, Georgia which was refused. A few days after that, on or about April 27, 1976, the complaint was filed in this action.

9 12. Despite being approved for restricted duty since November, 1975, by Dr. August, plaintiff has done no Department work since February, 1975. He is presently assigned to the Motor Transport Division.

13. On September 17, 1975 plaintiff was examined by the Article II Medical Board with respect to his disability retirement application. The application was disapproved. Upon the recommendation of District Surgeon Stanley August and the Deputy Chief Surgeon plaintiff's name was submitted to the Committee on Personnel for its meeting held January 12, 1976. As a result, he was again examined by the Medical Board on April 5, 1976 with respect to a disability retirement. ^{for} matter has been referred for additional medical evaluation.

14. On July 14, 1975, the Motor Transport Division preferred Charges and Specifications against the plaintiff for "stealing time", that is, requesting and taking vacation time to which he was not entitled, a total of seventeen (17) days. He was found guilty, fined forty (40) days salary and placed on one year probation.

15. On at least seven other occasions Charges and Specifications have been preferred against him for being out of his residence without permission between August, 1975 and April, 1976. A Departmental Trial is scheduled on these matters for May 12, 1976.

16. As early as 1972, plaintiff was found to have a drinking problem. He refused help by the Department's Counselling Unit until December 31, 1974 when he was sent by the Counselling Unit to Veritas Villa, Monticello, New York, for treatment as a chronic alcoholic. He returned on January 13, 1975 and returned on Restricted Duty on January 14, 1975. He again reported sick on February 2, 1975, where he has remained since. Plaintiff was not a member of, nor did he attend Alcoholics Anonymous meetings during this period, although a recent request to leave his residence to do so has been granted. On April 12, 1976, he was discontinued in the Department's drinking rehabilitation program.

17. In addition to the twenty-one (21) Central Sick Desk Requests for Permission to Leave his Residence, plaintiff made at least ten (10) requests of the District Surgeon, Dr. August, for permission to leave his residence over the past year, for various reasons including permission to visit his children and to see his lawyer. These requests were also granted.

18. Reasonable requests for permission to leave his residence have been invariably granted the plaintiff while he has been on sick report since February, 1975. Out of a

total of thirty-one (31) requests, twenty-eight (28) have been granted and only three (3) refused.

19. Plaintiff remains on sick report despite a finding by Dr. August that as of November, 1975, he has been capable of performing restricted duty.

20. Despite his alleged total disability for work, Officer Loughran has continued in his role as head coach of the Department's football team. I cannot believe such activity is consistent with a total disability. Two (2) requests to leave his residence for the purposes of attending football games have accordingly been denied. I have also reduced his M.B.5 hours to two (2) a day. In addition to that, the Department shall continue to grant reasonable requests for permission to leave his residence, such as to visit his children, his lawyer, or his doctor.

21. Officer Loughran has been periodically checked by plainclothes officers in unmarked cars or on foot to determine whether he was adhering to the terms of his Permission to Leave Residence while on Sick Report. The Officers and cars used are not identifiable as Police personnel or vehicles. Contrary to his assertions he has not been kept under constant surveillance.

/s/

GEORGE S. McCLANCY

Sworn to before me this

18th day of May, 1976

/s/

EXHIBIT - REQUESTS TO LEAVE RESIDENCE ANNEXED TO FOREGOING
AFFIDAVIT
(pp. 45a-72a)

45a

21 Requests

18 Approved

3 Denied

as of 5/5/76

Sgt. Mac

no. 1041

EMERGENCY REQUEST TO LEAVE RESIDENCE WHILE ON SICK REPORT

DATE 5/1/76

NAME PO LOUGHAN Joseph CHILD NO. 10047 COUNTY MTD

DATE REPORTED SICK 4-16-76 MED. DIST. 8 DIST. SURGEON AUGUST

CURRENT M.B.5 (YES) (NO) - IF YES, HOURS 7-8 TO

REASON FOR REQUEST TAKE CHILDREN OUT TO AIRPORT
+ DINNER INSTRUCTED TO NOTIFY MSSD SGT
when at res

HOURS REQUESTED+ FROM 1645 TO

REQUEST APPROVED - ✓

TIME LEFT 1645 TIME RETURNED 2125

REQUEST DENIED = LIST REASON

*Get stuck on railway
waiting home.
Notified at res - H.S.*

PREVIOUS EMERGENCY REQUEST - YES ✓ NO - NUMBER 12

-REASONABLE REQUESTS WILL BE GRANTED-

Sgt Brennan
SICK DESK SERGEANT

COPY TO: 1. MEMBER'S FOLDER
2. DISTRICT SURGEON
3. FILE

EFFECTIVE - JUNE 7, 1974

NO. 101

46a

EMERGENCY REQUEST TO LEAVE RESIDENCE WHILE ON SICK REPORT

DATE 5-1-76

NAME PC LUGHERN CHILD NO. JOSEPH A COUNTY MCAT

DATE REPORTED SICK 4-16-76 MED. DIST. X DIST. SURGEON AUGUST

CURRENT M.B.S (YES)(NO)-IF YES, HOURS 12-2 TO

REASON FOR REQUEST ATTEND FUNERAL FARMER

MEMBER LT DEPT PHIL. FAHEY

ST. EMERENS CHURCH 7511 FT. HAMILTON PKY

HOURS REQUESTED+ FROM 0800 TO

REQUEST APPROVED - ==

TIME LEFT 1800 TIME RETURNED 1200 9/13

REQUEST DENIED = == LIST REASON

PREVIOUS EMERGENCY REQUEST - YES == NO == -NUMBER

-REASONABLE REQUESTS WILL BE GRANTED-

J.P. C...
SICK DESK SERGEANT

COPY TO: 1. MEMBER'S FOLDER
2. DISTRICT SURGEON
3. FILE

EFFECTIVE - JUNE 7, 1974

n. 28

47a

EMERGENCY REQUEST TO LEAVE RESIDENCE WHILE ON SICK REPORT

DATE 4/29/76

NAME: PC. L. C. H. G. M. DIST. NO. 10047 - MEMBER - KIDS

DATE REPORTED SICK: 4-14-76 MED. DIST. 8 DIST. SURGEON J. J. V. S. T.

CURRENT M.B.S. (YES) (NO) - IF YES, HOURS 1300 TO 2000 REASON FOR REQUEST

ATTEND FUNERAL OF MEMBER OF FOOTBALL TEAM (- O. P. H. E. R. P. O.)

HOURS REQUESTED FROM 2000 TO 2230

REQUEST APPROVED -

TIME LEFT 2000 TIME RETURNED 2220

REQUEST DENIED = LIST REASON

PREVIOUS EMERGENCY REQUEST - YES NO - NUMBER 11

-REASONABLE REQUESTS WILL BE GRANTED-

Sgt. Keller
SICK DESK SERGEANT

- COPY TO: 1. MEMBER'S FOLDER
2. DISTRICT SURGEON
3. FILE

EFFECTIVE - JUNE 7, 1974

48a

EMERGENCY REQUEST TO LEAVE RESIDENCE WHILE ON SICK REPORT

DATE 4/27/8

NAME PO. Loughran Joseph CHILD NO. 10047 COUNTY WATERBURY

DATE REPORTED SICK 4/14/76 MED. DIST. 8 DIST. SURGEON AUGUST

CURRENT M.B.5 (YES)(NO)-IF YES, HOURS 1-2 TO 7-8
REASON FOR REQUEST WATERBURY POLICE OFFICE 198
MONITORING # TEL #624-5775

HOURS REQUESTED+ FROM _____ TO _____

REQUEST APPROVED - ---

TIME LEFT 1345 TIME RETURNED 1745

REQUEST DENIED = --- LIST REASON _____

PREVIOUS EMERGENCY REQUEST - YES ✓ NO --- -NUMBER 10

-REASONABLE REQUESTS WILL BE GRANTED-

[Signature]
SICK DESK SERGEANT

- COPY TO: 1. MEMBER'S FOLDER
2. DISTRICT SURGEON
3. FILE

EFFECTIVE - JUNE 7, 1974

BEST COPY AVAILABLE

3
no. 93

49a

EMERGENCY REQUEST TO LEAVE RESIDENCE WHILE ON SICK REPORT

DATE 4/24/76

NAME PO Joseph Lovelorn CHILD NO. 10047 COMMAND NOFOR INNS

DATE REPORTED SICK 4/14/76 MED. DIST. 8 DIST. SURGEON August

CURRENT M.B.5 (YES)(NO)-IF YES, HOURS 1-2 TO 7-8

REASON FOR REQUEST Take children to lunch + to the park
instructed to call mssd when at Res

HOURS REQUESTED+ FROM _____ TO _____

REQUEST APPROVED - ==

TIME LEFT ✓ 1130 TIME RETURNED 600 Sat

REQUEST DENIED = == LIST REASON _____

PREVIOUS EMERGENCY REQUEST - YES ✓ NO == -NUMBER 9

-REASONABLE REQUESTS WILL BE GRANTED-

Sgt. Brown
SICK DESK SERGEANT

- COPY TO: 1. MEMBER'S FOLDER
2. DISTRICT SURGEON
3. FILE

EFFECTIVE - JUNE 7, 1974

16. 92

DATE 4/23/76

DATE REPORTED SICK	MED. DIST.	DIST. SURGEON
4/14/76	S	August

HOURS REQUESTED+ FROM 1615 TO 1755 NOC

TIME LEFT 1615 TIME RETURNED 8:20 AM

REQUEST DENIED = LIST REASON

PREVIOUS EMERGENCY REQUEST - YES ☒ NO ☐ - NUMBER 5

~~-REASONABLE REQUESTS WILL BE GRANTED-~~

Sgt. Dunn
SICK DESK SERGEANT

- COPY TO: 1. MEMBER'S FOLDER
2. DISTRICT SURGEON
3. FILE

EFFECTIVE - JUNE 7, 1974

51a

EMERGENCY REQUEST TO LEAVE RESIDENCE WHILE ON SICK REPORT

DATE 4/31/76

NAME P.O. LOUGHRAN JOSEPH UNIT ID NO. 10047 OCCASION MOTOR TRANSPORT

DATE REPORTED SICK 4/14/76 MED. DIST. 8 DIST. SURGEON AUGUST

CURRENT M.B.S (YES)(NO)-IF YES, HOURS TO

REASON FOR REQUEST To appear AT DEPT TRNG AS A
Witness: Dft THOMAS RYAN, 4441st.

HOURS REQUESTED+ FROM 0900 TO as per

REQUEST APPROVED - ☒

TIME LEFT 0930 TIME RETURNED 1251

REQUEST DENIED = ☐ LIST REASON Ref call AT 135 hrs to

253-9523 ANSWERING SERV OPR, states service connected to
PO Loughran's phone used when notified that client is LYNIG A's mess LEFT

PREVIOUS EMERGENCY REQUEST - YES ☒ NO ☐ - NUMBER 8

-REASONABLE REQUESTS WILL BE GRANTED-

1430 PO Loughran TTR
~~to the~~ AB Sgt Dougherty

[Signature]
SICK DESK SERGEANT

- COPY TO: 1. MEMBER'S FOLDER
2. DISTRICT SURGEON
3. FILE

EFFECTIVE - JUNE 7, 1974

52a

EMERGENCY REQUEST TO LEAVE RESIDENCE WHILE ON SICK REPORT

DATE 4/20/76

NAME	SHIELD NO.	COLOR
PO Joseph Louchery	10047	McFOR TRANS.

DATE REPORTED SICK	MED. DIST.	DIST. SURGEON
4/14/76	8	AUGUST

CURRENT M.B.5 (YES) (NO) - IF YES, HOURS _____ TO _____
REASON FOR REQUEST TAKE CHILDREN TO PARK
INSTRUCTED TO CALL MED SEC WHEN AT RES

HOURS REQUESTED+ FROM 1550 TO As Vec

REQUEST APPROVED - 7

TIME LEFT 1555 TIME RETURNED 1725 *J. H. Ande*

REQUEST DENIED = LIST REASON _____

PREVIOUS EMERGENCY REQUEST - YES~~X~~ NO - NUMBER 7

~~-REASONABLE REQUESTS WILL BE GRANTED-~~

G. D. Sherman
STICK DESK SERGEANT

COPY TO: 1. MEMBER'S FOLDER
2. DISTRICT SURGEON
3. FILE

EFFECTIVE - JUNE 7, 1974

53a

EMERGENCY REQUEST TO LEAVE RESIDENCE WHILE ON SICK REPORT

no. 85
DATE April 19, 1976

NAME PO Joseph L. LUCCHIANI CHIEF NO. 10047 COMMAND Motor - Trucks
DATE REPORTED SICK 4/14/76 MED. DIST. 8 DIST. SURGEON August

CURRENT M.B.S. (YES) (NO) - IF YES, HOURS TO
REASON FOR REQUEST attended A.A. meeting at Xavier
H.S. W/501 Manhattan

HOURS REQUESTED+ FROM 1945 TO 2300
REQUEST APPROVED - ==

TIME LEFT TIME RETURNED

REQUEST DENIED = ☒ LIST REASON PO. not sick on back
pain - not a member of Counseling unit at this
time

PREVIOUS EMERGENCY REQUEST - YES ☒ NO - NUMBER 4

-REASONABLE REQUESTS WILL BE GRANTED-

Walter L. Lerner
SICK DESK SERGEANT

- COPY TO: 1. MEMBER'S FOLDER
2. DISTRICT SURGEON
3. FILE

EFFECTIVE - JUNE 7, 1974

April 18, 1976

DATE REPORTED SICK	MED. DIST.	DIST. SURGEON
4/14/76	8	August

REASON FOR REQUEST TAKEN CHILDREN TO RESTAURANT
IN NEIGHBORHOOD. INSTRUCTED TO EXT. SUPERVISION
DESK ON RETURN TO RES.

REQUEST APPROVED - _____

REQUEST DENIED = LIST REASON _____

~~-REASONABLE REQUESTS WILL BE GRANTED-~~

SICK DESK SERGEANT

- EFFECTIVE - JUNE 7, 1974

EMERGENCY REQUEST TO LEAVE RESIDENCE WHILE ON SICK REPORT

DATE 4/17/76

NAME	CHILD NO.	COLLEGE
PO Loughran, Joseph	10047	Motor Trucks

DATE REPORTED SICK	MED. DIST.	DIST. SURGEON
4/17/76	S	DA August

CURRENT M.B.5 (YES) (NO) - IF YES, HOURS _____ TO _____

 REASON FOR REQUEST Take children to Grandmothers
At 1659 E 8th St Bklyn. instructed to call
MSSD Sgt on return to Res
HOURS REQUESTED FROM 1600 TO As Nec.REQUEST APPROVED - ☒TIME LEFT 1600 TIME RETURNED 1715 Sgt KREQUEST DENIED = ☐ LIST REASON _____PREVIOUS EMERGENCY REQUEST - YES ☒ NO ☐ - NUMBER 4

-REASONABLE REQUESTS WILL BE GRANTED-

Sgt Bernman
 SICK DESK SERGEANT

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 2. DISTRICT SURGEON
 3. FILE

EFFECTIVE - JUNE 7, 1974

EMERGENCY REQUEST TO LEAVE RESIDENCE WHILE ON SICK REPORT

D.F. 4/16/76

NAME: P/O Loughran, Joseph CHIEF NO. 10047 COMMAND Motor Trans.

DATE REPORTED SICK 4/14/76 MED. DIST. 8 DIST. SURGEON DR AUGUST

CURRENT M.B.5 (YES)(NO)-IF YES, HOURS TO

REASON FOR REQUEST Therapy

HOURS REQUESTED+ FROM 2030 TO ?

REQUEST APPROVED -

TIME LEFT TIME RETURNED

REQUEST DENIED = ☒ LIST REASON LATENESS OF
hour, HOLIDAY (GOOD FRIDAY)

PREVIOUS EMERGENCY REQUEST - YES ☒ NO ☒ - NUMBER 3

-REASONABLE REQUESTS WILL BE GRANTED-

Sgt. W. Felt
SICK DESK SERGEANT

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2. DISTRICT SURGEON
3. FILE

EFFECTIVE - JUNE 7, 1974

EMERGENCY REQUEST TO LEAVE RESIDENCE WHILE ON SICK REPORT

DATE 4/16/76NAME P/O Loughran, Joseph CHILD NO. 10047 COLLARD MOTOR TRANS.DATE REPORTED SICK 4/14/76 MED. DIST. 8 DIST. SURGEON DR AUGUSTCURRENT M.B.5 (YES)(NO)-IF YES, HOURS TO REASON FOR REQUEST THERAPYHOURS REQUESTED+ FROM 2030 TO ?REQUEST APPROVED - TIME LEFT TIME RETURNED REQUEST DENIED = ☒ LIST REASON LATENESS OF
hour, HOLIDAY (GOOD FRIDAY)PREVIOUS EMERGENCY REQUEST - YES ☒ NO ☒ NUMBER 3

-REASONABLE REQUESTS WILL BE GRANTED-

Sgt. W. Little
SICK DESK SERGEANTCOPY TO: 1. MEMBER'S FOLDER
2. DISTRICT SURGEON
3. FILE

EFFECTIVE - JUNE 7, 1974

EMERGENCY REQUEST TO LEAVE RESIDENCE WHILE ON SICK REPORT

DATE 4/16/76

NAME	CHILD'S NO.	COUNCIL NO.
DO Joseph Loughran	10047	Moose Toms

DATE REPORTED SICK	MED. DIST.	DIST. SURGEON
4/14/76	8	August

CURRENT M.B.5 (YES) (NO) - IF YES, HOURS _____ TO _____
 REASON FOR REQUEST Take children from his residence to
their Res at 106 Celeste St Bklyn. OFFICER INSTRUCTED
to call MSSD when at Res.

HOURS REQUESTED+ FROM 1520 TO AS NEC.

REQUEST APPROVED - Z

TIME LEFT 1530 TIME RETURNED 1555 Sgt JLB

REQUEST DENIED = LIST REASON _____

PREVIOUS EMERGENCY REQUEST - YES ☒ NO ☐ - NUMBER 3

-REASONABLE REQUESTS WILL BE GRANTED-

Sgt J. Brennan
 SICK DESK ST. UNIT

COPY TO: 1. MEMBER'S FOLDER
 2. DISTRICT SURGEON
 3. FILE

EFFECTIVE - JUNE 7, 1974

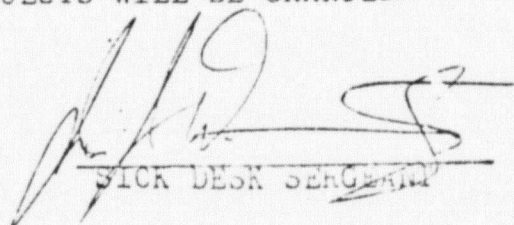
EMERGENCY REQUEST TO LEAVE RESIDENCE WHILE ON SICK REPORT

DATE 4/15/76NAME P.O. LOUGHMAN TITLE TORRIT A ID NO. 10047 COMMAND Motor Transport DivDATE REPORTED SICK 4/14/76 MED. DIST. 8 DIST. SURGEON AUGUST

CURRENT M.B.5 (YES)(NO)-IF YES, HOURS _____ TO _____

REASON FOR REQUEST REQUEST TIME TO CONFER WITH HIS ATTORNEYMR HANDED FORM 188 MONTAGUE ST BRLYN 624-4775ADVISED TO CONTACT S/D/M/S ON ARRIVING AT ATTORNEY OFFICEHOURS REQUESTED+ FROM 0945 TO _____REQUEST APPROVED - ✓TIME LEFT 0945 TIME RETURNED 1512REQUEST DENIED = LIST REASON _____PREVIOUS EMERGENCY REQUEST - YES NO -NUMBER _____

-REASONABLE REQUESTS WILL BE GRANTED-


 SICK DESK SERGEANT

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 2. DISTRICT SURGEON
 3. FILE

EFFECTIVE - JUNE 7, 1974

EMERGENCY REQUEST TO LEAVE RESIDENCE WHILE ON SICK REPORT

DATE 4/10/76

NAME	UNIT NO.	COMMAND
PO Joseph Loughran	100-17	Motor TRANS

DATE REPORTED SICK	MED. DIST.	DIST. SURGEON
<u>4/14/76</u>	<u>8</u>	<u>August</u>

CURRENT M.B.5 (YES) (NO) - IF YES, HOURS _____ TO _____

REASON FOR REQUEST To Attend A Foot Ball Game involving
The Police Dept. Team.

HOURS REQUESTED+ FROM _____ TO _____

REQUEST APPROVED -

TIME LEFT _____ TIME RETURNED _____

REQUEST DENIED = ☒ LIST REASON Request Does Not Fall
within MED Sec Guidelines

PREVIOUS EMERGENCY REQUEST - YES ☒ NO - NUMBER

-REASONABLE REQUESTS WILL BE GRANTED-

Sgt Brenna
 SICK DESK SERGEANT

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 2. DISTRICT SURGEON
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EFFECTIVE - JUNE 7, 1974

EMERGENCY REQUEST TO LEAVE RESIDENCE WHILE ON SICK REPORT

DATE 3/14/76

NAME	CHILD NO.	COLLEAD
<u>P.O. LOUGHRAN JOSEPH</u>	<u>10047</u>	<u>RDU MTD</u>

DATE REPORTED SICK	MED. DIST.	DIST. SURGEON
<u>12/4/75</u>	<u>8</u>	<u>AVGUST</u>

CURRENT M.B.5 (YES)(NO)-IF YES, HOURS _____ TO _____

REASON FOR REQUEST MEALS & LOCAL

HOURS REQUESTED+ FROM _____ TO _____

REQUEST APPROVED - ☒TIME LEFT 1300 TIME RETURNED _____REQUEST DENIED = ☐ LIST REASON VISIT & TAKE CHILDRENTO 200. WILL BE AT 106 CHELSEA COURT BAYVIEWPREVIOUS EMERGENCY REQUEST - YES ☒ NO ☐ -NUMBER 2

3/15/76

0945 AM

-REASONABLE REQUESTS WILL BE GRANTED-

SGT DOUGHERTY CONFERRED WITH
OFFICER LOUGHRAN RE FAILURE
TO RETURN CALL ON EMERGENCY
REQUEST FOR 3/14. OFFICER STATES
HE RETURN CALL AT 1805 & SPoke
TO AN OFFICER BY NAME OF RICE
TO AN OFFICER TO:
1. MEMBER'S FOLDER
2. DISTRICT SURGEON
3. FILE

SICK DESK SERGEANT

EFFECTIVE - JUNE 7, 1974

EMERGENCY REQUEST TO LEAVE RESIDENCE WHILE ON SICK REPORT

DATE 6 26 75

RANK	NAME	SHIELD NO.	COMMAND
PO	LOUCHEN	10047	A17D

DATE REPORTED SICK	MED. DIST.	D. T. SURGEON
3-2-75	8	110057

CURRENT M.B. 5 (YES) (NO) - IF YES, HOURS 1200 TO 1500REASON FOR REQUEST TO GO OUT AND
EATHOURS REQUESTED + From 1810 To _____REQUEST APPROVED - ☒TIME LEFT 1815 TIME RETURNED 2145 SydneyREQUEST DENIED + ☐ LIST REASON P/O As used to go out
to eat - 2 hrs. seemed reasonable -P/O Took 3 1/2 hrs - is CSI - Advised by
Under signed to get M-55 to cover mealsPREVIOUS EMERGENCY REQUEST - YES ☐ NO ☒ - NUMBER _____

- REASONABLE REQUESTS WILL BE GRANTED -

Agm g/L
SICK DESK SERGEANT

COPY TO: 1. Member's Folder
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3. File

Effective - June 7, 1974

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EMERGENCY REQUEST TO LEAVE RESIDENCE WHILE ON SICK REPORT

DATE

6-11-75

RANK

NAME

SHIELD NO.

COMMAND

P.O.

LOUGHRAN, Joseph

10047

MTD

DATE REPORTED SICK

MED. DIST.

DIST. SURGEON

3-2-75

8

AUGUST

CURRENT M.B. 5 (YES) ~~(NO)~~

- IF YES, HOURS

1200

TO

1500

REASON FOR REQUEST

FATHER in HOSPITAL -

CALIDONIA Hosp. - Brooklyn

HOURS REQUESTED + From

1830

To

2030

REQUEST APPROVED -

☒

TIME LEFT

1830

TIME RETURNED

2105

(Sime)

REQUEST DENIED +

☐

LIST REASON

PREVIOUS EMERGENCY REQUEST - YES ☐

NO ☒

NUMBER

- REASONABLE REQUESTS WILL BE GRANTED -

SICK DESK SERGEANT

- COPY TO:
1. Member's Folder
 2. District Surgeon
 3. File

Effective - June 7, 1974

EMERGENCY REQUEST TO LEAVE RESIDENCE WHILE ON SICK REPORT

DATE June 8, 1951

RANK	NAME	SHIELD NO.	COMPANY
<u>1st</u>	<u>Leahane, Joseph</u>	<u>10047</u>	<u>117th</u>

DATE REPORTED	WEEK	MED. DIST.	DIST. SURGEON
<u>3-2-51</u>	<u>8</u>	<u>August</u>	

CURRENT M.R. 5 (YES ☒ NO ☐ - IF YES, HOURS TO REASON FOR REQUEST 2nd D. P.D. FOOTBALLTESTIMONIALHOURS REQUESTED FROM 1300 TO 2300REPORTING APPROVED - ☒TIME LEFT 1300 TIME RETURNED 2250RE-STATE DATES + ☐ FIRST REASON PREVIOUS REQUESTS - YES ☒ NO ☐ - NUMBER 2

- FUTURE REQUESTS WILL BE GRANTED -

W. C. Fort
SICK DESK SERGEANTCOPIES OF THIS REPORT TO BE
1. District Surgeon
2. 1st

ENCLOSURE - 1, 2, 3, 4

EMERGENCY REQUEST TO LEAVE RESIDENCE WHILE ON SICK REPORT

DATE 3/29/75

RANK	NAME	SHIELD NO.	COMMAND
<u>PO</u>	<u>LOUGHRAN Joseph</u>	<u>10047</u>	<u>MT TRAX</u>

DATE REPORTED SICK	MED. DISP.	DIST. SURGEON
<u>3/2/75</u>	<u>8</u>	<u>AUGUST</u>

CURRENT M.B. 5 (YES)(NO) - IF YES, HOURS 12 TO 3REASON FOR REQUEST HAS APP with Ren/Estate to ViewAPARTMENT. INSTRUCTED to call MED Sec (SGT)When at ResHOURS REQUESTED + From 1500 To 1800REQUEST APPROVED - ☐TIME LEFT 1500 TIME RETURNED 1830REQUEST DENIED + ☐ LIST REASON _____PREVIOUS EMERGENCY REQUEST - YES ☐ NO ☒ - NUMBER _____

- REASONABLE REQUESTS WILL BE GRANTED -

Sgt. Brennan
SICK DESK SERGEANT

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2. District Surgeon
3. File

Effective - June 7, 1974

EMERGENCY REQUEST TO LEAVE RESIDENCE WHILE ON SICK REPORT

DATE

5/10/75

RANK	NAME	SHIELD NO.	COMPLAINT
PO	LOUGHRAN, Joseph	10047	MT TRANS

DATE REPORTED SICK	MED. DIST.	DIST. SURGEON
3/2/75	8	AUGUST

CURRENT M.B. 5 (YES)(NO) - IF YES, HOURS 1200 TO 1500

 REASON FOR REQUEST ATTEND Police - Fire Football Game
 AT Hofstra Univ, L.I. INSTRUCTED TO
 CALL SICK DESK Sat. when AT RES.

HOURS REQUESTED + From 1700 To 2400

REQUEST APPROVED - ☒

TIME LEFT 1700 TIME RETURNED 0040

REQUEST DENIED + ☐ LIST REASONPREVIOUS EMERGENCY REQUEST - YES ☐ NO ☐ - NUMBER

- REASONABLE REQUESTS WILL BE GRANTED -

 Sgt. Brennan
 SICK DESK SERGEANT

 COPY TO: 1. Member's Folder
 2. District Surgeon
 3. File

Effective - June 7, 1974

SURNAME LOUGHRAN FIRST NAME JOSEPH P. # P/O SHIELD No. 10047 COMMAND RDH-M/D

on sick report, has been granted permission to leave his residence on:

DAY (S) (of week) Daily TIME (S) 1300X1400 DATE (S) 3/11 to
1900X2000 3/31 for the following:

Purpose (s): MEALS

Destination (s): local

3-11-76
(DATE)

Agt William for Capt McCleary
(SURGEON'S SIGNATURE)

Sm
(MED. DIST.)

FORWARD TO 1st Lt. James J. Lofgren, Section 7690, 3rd AF, 5th AC

INSTRUCTIONS: & To be prepared by member's district surgeon, in triplicate, original to Medical Section, duplicate to member, triplicate filed.

PERMISSION TO LEAVE RESIDENCE WHILE ON SICK REPORT

P.D. 429-51 (5-74)
(Formerly M.B. 5)

ALL Reasonable Emer. Requests will be Granted & Documented - Rev. T

Reasonable requests do not
include permission to attend
Football Practice at 1130 hrs Tues-
Thurs - Sat -

Address of Tail # will be obtained
AT/c To Sick Deck before leaving &
upon Return to residence & a
follow up Tail Check at both times
will be made by Sick Deck Sargent -
S4002

70a

SURNAME: LEWIS FIRST NAME: JOSEPH RANK: PO DISTRICT NO.: 1170 COMMAND: MTD
 on sick report, has been granted permission to leave his residence on
 DAY (S) of week: FRI TIME (S): 1500 DATE (S): 11-21-75 for the following
 Purpose (s): to see family
 Destination (s): 1152 Broadway
11-26-75 August P
 DATE: SURGEON'S SIGNATURE: (M.D. DIST.)
 FORWARD TO: MEDICAL SECTION

INSTRUCTIONS: To be prepared by member's district surgeon, in triplicate, original to Medical Section, duplicate to member, triplicate filed.

PERMISSION TO LEAVE RESIDENCE WHILE ON SICK REPORT

P.D. 429-051 (6-74)
(Formerly M.B. 5)

SURNAME: LOUGHAN FIRST NAME: JOSEPH RANK: PO DISTRICT NO.: 1247 COMMAND: MTD
 on sick report, has been granted permission to leave his residence on
 DAY (S) of week: SUN TIME (S): 1000-1100 DATE (S): 11-22-75 for the following
 Purpose (s): VISIT CHILDREN
 Destination (s): IN NEIGHBORHOOD
11-24-75 DE AUGUST P
 DATE: SURGEON'S SIGNATURE: (M.D. DIST.)
 FORWARD TO: MEDICAL SECTION

INSTRUCTIONS: To be prepared by member's district surgeon, in triplicate, original to Medical Section, duplicate to member, triplicate filed.

PERMISSION TO LEAVE RESIDENCE WHILE ON SICK REPORT

P.D. 429-051 (6-74)
(Formerly M.B. 5)

SURNAME: LOUGHAN FIRST NAME: JOSEPH RANK: PO DISTRICT NO.: 1170 COMMAND: MTD
 on sick report, has been granted permission to leave his residence on
 DAY (S) of week: Thursday TIME (S): 12-5 DATE (S): 12/11/75 for the following
 Purpose (s): see children
 Destination (s): neighborhood
12/9/75 August P
 DATE: SURGEON'S SIGNATURE: (M.D. DIST.)
 FORWARD TO: MEDICAL SECTION

INSTRUCTIONS: To be prepared by member's district surgeon, in triplicate, original to Medical Section, duplicate to member, triplicate filed.

PERMISSION TO LEAVE RESIDENCE WHILE ON SICK REPORT

P.D. 429-051 (6-74)
(Formerly M.B. 5)

See HOS 71a

SURNAME: Lechman FIRST NAME: Joseph RANK: PC SHIELD No: 147 COMMAND: 1170

on sick report, has been granted permission to leave his residence on:

DAY (S) of week: Sun TIME (S): 09:00 - 17:00 DATE (S): 10-12

for the following:

Purpose (s): Pick up Ch. Lechman (Signature)

Destination (s): Walden Hall

DATE: 10/1/12 SURGEON'S SIGNATURE: Dr. August (MED. DEPT.): 8

FORWARD TO: MEDICAL SECTION

INSTRUCTIONS: To be prepared by member's district surgeon, in triplicate, original to Medical Section, duplicate to member, triplicate filed.

PERMISSION TO LEAVE RESIDENCE WHILE ON SICK REPORT P.D. 429-051 (6-74) (Formerly M.B. 5)

SURNAME: Loughm FIRST NAME: Joseph RANK: PC SHIELD No: 147 COMMAND: 1170

on sick report, has been granted permission to leave his residence on:

DAY (S) of week: Wed TIME (S): 9:30-12:00 DATE (S): 10/3/12

for the following:

Purpose (s): Attend funeral Felix Offner

Destination (s): St. Vincent Ferrer

DATE: 10/14/12 SURGEON'S SIGNATURE: Dr. August (MED. DEPT.): 8

FORWARD TO: MEDICAL SECTION

INSTRUCTIONS: To be prepared by member's district surgeon, in triplicate, original to Medical Section, duplicate to member, triplicate filed.

PERMISSION TO LEAVE RESIDENCE WHILE ON SICK REPORT P.D. 429-051 (6-74) (Formerly M.B. 5)

SURNAME: Lechman FIRST NAME: Joseph RANK: PC SHIELD No: 147 COMMAND: 1170

on sick report, has been granted permission to leave his residence on:

DAY (S) of week: Sun TIME (S): 10:00 - 17:00 DATE (S): 10-12

for the following:

Purpose (s): Pick up C. Lechman

Destination (s): Walden Hall

DATE: 10-12-12 SURGEON'S SIGNATURE: Dr. August (MED. DEPT.): 8

FORWARD TO: MEDICAL SECTION

INSTRUCTIONS: To be prepared by member's district surgeon, in triplicate, original to Medical Section, duplicate to member, triplicate filed.

PERMISSION TO LEAVE RESIDENCE WHILE ON SICK REPORT P.D. 429-051 (6-74) (Formerly M.B. 5)

72a

NAME: Lynch, Joseph RANK: P. SHIELD No: 10440 COMMAND: 9-24-45

on sick report, has been granted permission to leave his residence on:

DAY (S) of week: 11/17 TIME (S): 4:37 DATE (S): 11/17 for the following:

Purpose (S): _____

Destination (S): _____

DATE: 11/17/45 SURGEON'S SIGNATURE: J. Lynch (MED. DIST.)

FORWARD TO: MEDICAL SECTION

INSTRUCTIONS: To be prepared by member's district surgeon, in triplicate, original to Medical Section, duplicate to member, triplicate filed.

PERMISSION TO LEAVE RESIDENCE WHILE ON SICK REPORT

P.D. 429-051 (6-74)
(Formerly M.D. 5)

TO LEOGRAN RMD.
TO CIVIL CT. KINGS
PART 21 ROOM 206A
15 WILLOUGHBY ST. B'K

JAMES ALDER IN RECORD TO OFFICE B'K
M. KINGS RMD

INSTRUCTED TO PHONE IN ON RETURN TO R.C.S.

Joseph Lynch
11/17/45

NAME: Lynch, Joseph FIRST NAME: Joseph RANK: P. SHIELD No: 10440 COMMAND: 9-24-45

on sick report, has been granted permission to leave his residence on:

DAY (S) of week: 10-6 TIME (S): 11:51/45 DATE (S): 11/17/45 for the following:

Purpose (S): See Clerk

Destination (S): King's

DATE: 11/17/45 SURGEON'S SIGNATURE: J. Lynch (MED. DIST.)

FORWARD TO: ☐ MEDICAL BUREAU ☐ C.I.U.

INSTRUCTIONS: To be prepared by member's district surgeon, in quadruplicate, original to Medical Bureau, duplicate to C.I.U., tri-plate to member, quadruplicate filed.

PERMISSION TO LEAVE RESIDENCE WHILE ON SICK REPORT

P.D. 129-051 (6-74)
(Formerly M.D. 5)

AFFIDAVIT OF STANLEY AUGUST, M.D.

(Dated May 8, 1976)

(pp. 73a-74a)

73a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x

JOSEPH A. LOUGHAN, JR.,

Plaintiff,

- against -

MICHAEL J. CODD, individually, as Police Commissioner of the Police Department of the City of New York, and as Executive Chairman of the Board of Trustees of the Police Pension Fund, Article II, GEORGE McCLANCY, individually, and as Administrative Officer, Medical Section, New York City Police Department, STANLEY AUGUST, individually, and as District Surgeon of the New York City Police Department.

Defendants.

----- x

STATE OF NEW YORK

SS.:

COUNTY OF KINGS)

STANLEY AUGUST, M.D., being duly sworn, deposes and

says:

1. I was graduated from the Harvard Medical School, Boston, Massachusetts, in 1942. I was licensed to practice medicine in New York State in August, 1942. I have been certified by the American Board of Internal Medicine. I am currently an Associate Attending Physician at Maimonides Hospital and at Kings County Hospital.

2. In addition to these positions, I have served as a physician with the New York City Police Department for approximately nineteen years, and am presently District Police Surgeon of the Eighth Medical District, one of twenty-six Medical Districts in the Police Department. In that capacity

I am responsible, among other functions, for recommending that a sick police officer remain on sick report or return to duty, and for setting the hours a police officer on sick report may leave his residence for purposes of rehabilitation or recuperation.

3. P.O. Loughran returned to my Medical District in 1974, after living elsewhere. On February 3, 1975, he reported sick. While on sick report he reported to my office on an approximate weekly basis.

4. It is my medical opinion, based upon reports submitted by an examining orthopedic surgeon, as well as my own examination, that Police Officer Loughran is well enough to return to restricted duty in some type of desk job. I have recommended that he return to such duty, but as yet has not done so, AT LEAST NOT UNTIL MAY 7, 1976,
P.O.

Sworn to before me this

8th day of May, 1976

Stanley August M.D.
STANLEY AUGUST, M.D.

Notary Public

Alameda County - State of Calif.
Reg # 9125525
My Comm Expires 12/78

75a

RULE 9(g) STATEMENT
(Filed September 24, 1976) (pp. 75a -82a)
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

JOSEPH A. LOUGHRAN, JR., :

Plaintiff, :

-against- :

MICHAEL J. CODD, individually, as :

Police Commissioner of the Police :

Department of the City of New York, :

and as Executive Chairman of the :

Board of Trust of the Police Pen- :

sion Fund, Article II, GEORGE McCLANCY, :

individually, and as Administrative :

Officer, Medical Section, New York City :

Police Department, STANLEY AUGUST, in- :

dividually, and as District Surgeon of :

the New York City Police Department, :

Defendants. :

-----x

Defendants, by their attorney, submit the following statement of facts as to which there is no genuine issue to be tried:

1. The Commanding Officer of the Department's Medical Section is responsible for the administration and supervision of members of the force while they are on Sick Report, as well as setting the hours officers on Sick Report may leave their residences, except where such leave is for a medical purpose. In that case, the appropriate district surgeon establishes these hours.

2. An officer on Full Duty is presumed physically able to perform all duties required of a police officer, including patrol duty and radio-motor patrol.

3. An officer on Restricted Duty is given an assignment with restrictions recommended by his district surgeon, consistent with his medical condition. Such an assignment involves a full day's work, generally a desk job during the day close to the officer's home.

4. An officer on Sick Report is considered too ill to perform even a limited assignment on Restricted Duty. He does no work, but continues to receive full pay and all benefits. In addition, an officer on Sick Report may be eligible for monthly Social Security payments.

5. Every member of the Force enjoys unlimited sick leave with full pay.

6. Because of these very liberal sick leave benefits, the Department has an obligation to encourage men on Sick Report to return to at least Restricted Duty as soon as they are physically able to do so.

7. The Department has established regulations wherein an officer on Sick Report cannot leave his residence or place of confinement "except by permission of his district surgeon or for the purpose of visiting a police surgeon." The terms of the Permission to Leave Residence While on Sick Report vary in each case, depending upon the officer's condition and the recommendation of his district surgeon.

8. In addition to the established hours in which an officer on Sick Report is permitted to leave his residence, an officer may receive permission to leave his residence for good cause at other times by telephoning the Central Sick Desk.

9. Plaintiff, age 35, was appointed to the Police Department February 15, 1963.

10. In 1965 plaintiff suffered a line of duty back injury.

11. On December 29, 1972 plaintiff was assigned to Restricted Duty with a diagnosis of low back syndrome.

12. For all practical purposes, Police Officer Loughran has performed no regular duty since July 1974.

13. Plaintiff is presently assigned to the Motor Transport Division.

14. Since February 6, 1975 plaintiff has been on virtually uninterrupted sick report and has, consequently, performed no duty at all for the Police Department.

15. The only exceptions to this were in February and March, 1975, when he reported for Restricted Duty on two occasions only to return on sick report within two (2) days on both occasions.

16. On April 13, 1976 he reported for restricted duty and objected to the proposed tour of duty. On April 14, 1976 he again returned to sick report where he remains to date.

17. Pursuant to Department regulations, Officer Loughran while on sick report cannot leave his residence or place of confinement "except by permission of his district surgeon or for the purpose of visiting a police surgeon."

18. Between February, 1975 (when plaintiff first went on continuous sick report) to March 11, 1976 he was granted permission to leave his residence ("M.B.5 hours") on a daily basis between the hours of 11:00 A.M. and 2:00 P.M. and 6:00 P.M. to 8:00 P.M.

19. After March 11, 1976 this was reduced to two (2) hours a day.

20. In addition thereto plaintiff may receive permission to leave his residence for good cause at other times by telephoning the Central Sick Desk. Reasonable requests are invariably granted.

21. Since February, 1975, when the plaintiff went on sick report he has made twenty-one (21) requests of the Central Sick Desk for permission to leave his residence, of which eighteen (18) have been granted.

22. Requests that have been granted have been for reasons such as to see his children; to attend a funeral of a former member of the Department; to attend a funeral of

a member of the Department football team; to visit his lawyer; to appear at a Departmental Trial as a witness; to attend a meeting of Alcoholics Anonymous; for meals; to visit his father in Calidonia Hospital, Brooklyn; to attend a P.B.A. Football Testimonial; to meet a real estate broker to view an apartment; and in May, 1975, to attend a Police Department football game at Hofstra University, Hempstead, Long Island.

23. Three Desk requests for permission to leave his residence were refused (out of twenty-one such requests).

24. On April 16, 1976 plaintiff requested permission to leave his residence to take therapy. This request was refused because of (i) the lateness of the hour it was made (8:30 P.M.) and (ii) the day on which it was made (Good Friday).

25. On April 19, 1976 plaintiff requested permission to attend a meeting of Alcoholics Anonymous. This request was denied as the Department had no record of his ever having attended such a meeting previously, or that he was ever a member of that group or any Department Counseling group.

26. A similar request by plaintiff to attend a meeting of Alcoholics Anonymous has recently been granted.

27. Plaintiff is the Head Coach of the Police Department Football Team.

28. In or about February, 1976 after learning for the first time that plaintiff is the Head Coach of the Police Department Football Team, the Commanding Officer of the Medical Section directed that plaintiff's Permission to Leave Residence While on Sick Report ("M.B.5 hours") be reduced from 11:00 A.M. to 2:00 P.M. and 6:00 P.M. to 8:00 P.M. daily, to 1:00 P.M. to 2:00 P.M. and 7:00 P.M. to 8:00 P.M. daily, and he so informed the District Surgeon. This reduction became effective as of March 11, 1976.

On April 10, 1976, plaintiff requested permission to attend a Department Football game at Hofstra University which was refused in view of the extended time he had been on sick report, as well as his activities as head coach of the football team. / ^{Capt. McClancy} believed he should be prevented from engaging in athletic activities which could prevent the performance of his police duties.

30. Plaintiff's activities as head coach were inconsistent with an alleged totally disabling back condition he claimed to be suffering from.

31. Since November, 1975, Dr. Stanley August, District Surgeon for the Department indicated that Officer Loughran could perform some kind of restricted duty.

32. On April 18, 1976, plaintiff requested permission to see his attorneys in this case which was granted.

33. A couple of days later plaintiff requested permission to accompany the Department football team to a game to be played in Atlanta, Georgia which was refused.

34. A few days after that, on or about April 27, 1976, the complaint was filed in this action.

35. Despite being approved for restricted duty since November, 1975, by Dr. August, plaintiff has done no Department work since February, 1975.

36. Plaintiff is presently assigned to the Motor Transport Division.

37. On September 17, 1975 plaintiff was examined by the Article II Medical Board with respect to his disability retirement application. The application was disapproved.

38. Upon the recommendation of District Surgeon Stanley August and the Deputy Chief Surgeon plaintiff's name was submitted to the Committee on Personnel for its meeting held January 13, 1976.

39. As a result, he was again examined by the Medical Board on April 5, 1976 with respect to a disability retirement. The matter has been referred for additional medical evaluation.

40. On July 14, 1975, the Motor Transport Division preferred Charges and Specifications against the plaintiff for "stealing time", that is, requesting and taking vacation time to which he was not entitled, a total of seventeen (17) days. He was found guilty, fined forty (40) days salary and placed on one year probation.

41. On at least seven other occasions Charges and Specifications have been preferred against him for being out of his residence without permission between August, 1975 and April, 1976.

42. A Departmental Trial is scheduled on these matters for May 12, 1976.

43. As early as 1972, plaintiff was found to have a drinking problem.

44. Plaintiff refused help by the Department's Counselling Unit until December 31, 1974 when he was sent by the Counselling Unit to Veritas Villa, Monticello, New York, for treatment as a chronic alcoholic.

45. Plaintiff returned on January 13, 1975 and returned on Restricted Duty on January 14, 1975. He again reported sick on February 2, 1975, where he has remained since.

46. Plaintiff was not a member of, nor did he attend Alcoholics Anonymous meetings during this period, although a recent request to leave his residence to do so has been granted.

47. On April 12, 1976, he was discontinued in the Department's drinking rehabilitation program.

48. In addition to the twenty-one (21) Central Sick Desk Requests for Permission to Leave his Residence, plaintiff made at least ten (10) requests of the District Surgeon, Dr. August, for permission to leave his residence over the past year, for various reasons including permission to visit his children and to see his lawyer. These requests were also granted.

49. Reasonable requests for permission to leave his residence have been invariably granted the plaintiff while he has been on sick report since February, 1975.

50. Out of a total of thirty-one (31) requests, twenty-eight (28) have been granted and only three (3) refused.

51. Plaintiff remains on sick report despite a finding by Dr. August that as of November, 1975, he has been capable of performing restricted duty.

52. Despite his alleged total disability for work, Officer Loughran has continued in his role as head coach of the Department's football team.

53. Such activity is inconsistent with a total disability.

54. Two (2) requests to leave his residence for the purposes of attending football games have accordingly been denied.

55. Plaintiff's M.B.5 hours have been reduced to two (2) a day. In addition to that, the Department shall continue to grant reasonable requests for permission to leave his residence, such as to visit his children, his lawyer, or his doctor.

56. Officer Loughran has been periodically checked by plainclothes officers in unmarked cars or on foot to determine whether he was adhering to the terms of his Permission to Leave Residence while on Sick Report. The Officers and cars used are not identifiable as Police personnel or vehicles.

57. Plaintiff has not been kept under constant police surveillance.

W. BERNARD RICHLAND
Corporation Counsel
Attorney for Defendants
Municipal Building
New York, N.Y. 10007
566-6377/2192

PLAINTIFF'S NOTICE OF CROSS-MOTION

(Filed June 3, 1976)

(pp. 83a-84a)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK-----x
JOSEPH A. LOUXEPAN, JR.,

Plaintiff,

- against -

MICHAEL J. CUREL, individually, as Police
Commissioner of the Police Department of
the City of New York, and as Executive
Chairman of the Board of Trustees of the
Police Pension Fund, Article II, GEORGE
McCLANCY, individually, and as Administra-
tive Officer, Medical Section, New York
City Police Department, STANLEY AUGUST, in-
dividually, and as District Surgeon of the
New York City Police Department,Defendants.
-----xNOTICE OF
CROSS MOTION76 Civ. 770
(J.M.)

PLEASE TAKE NOTICE that upon the complaint of JOSEPH A. LOUXEPAN, JR., duly verified the 27th day of April, 1976, the order to show cause of April 28, 1976, plaintiff's Preliminary Memorandum of Law, and upon the defendants' notice of motion for summary judgment, dated May 20, 1976, the affidavit of MICHAEL S. CUREL, verified May 19, 1976, the affidavit of the defendant McCLANCY, verified May 18, 1976, the affidavit of the defendant AUGUST, verified May 8, 1976, submitted in support thereof, and upon the annexed Memorandum of Law, the undersigned will cross-move before Hon. Jacob Mishler at Room 5, United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on the 4th day of

June, 1976, at 130 D. I. for the entry, pursuant to Rule 56(d) and (e) Federal Rules Civil Procedure, of a summary judgment, interlocutory in character, on the issue of liability alone, on the ground that there is no genuine issue as to the material facts, and that the plaintiff is entitled to a judgment on the issue of liability as a matter of law.

WITNES: Brooklyn, New York
June 1976.

MARGOL B. POTER,
JWA ILLUM., of Counsel

Attorneys for Plaintiff
Office & P.O. Address
188 Montague Street
Brooklyn, New York 11201
(212) 624 - 5775

GENERAL RULE 9(g) STATEMENT

85a

(Filed September 24, 1976) (pp. 85a-96a)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
JOSEPH A. LOUGHEAN, JR.,

Plaintiff,

- against -

MICHAEL J. COFF, individually, as Police
Commissioner of the Police Department of
the City of New York, and as Executive
Chairman of the Board of Trustees of the
Police Pension Fund, Article II, GEORGE
McCLANCY, individually, and as Administra-
tive Officer, Medical Section, New York
City Police Department, STANLEY AUGUST,
individually, and as District Surgeon of
the New York City Police Department,

Defendants.
-----x

GENERAL RULE 9(g) STATEMENT

76 Civ. 770
(J.N.)

Plaintiff, by his attorneys, HAROLD B. FONER and IRA LEITEL, of
Counsel, submits the following statement of the material facts in support of
his motion for summary judgment and as to which there is no genuine issue to be
tried:

1. Plaintiff is a thirty-four (34) year old citizen of the United States
and of the State of New York, residing in the City of New York, County of Kings.
2. Plaintiff resides alone, having separated from his wife and family
pursuant to the terms of a written separation agreement.

3. Plaintiff was permanently appointed as a Police Officer in the Police Department of the City of New York (hereinafter referred to as the "Department") on February 15, 1963.

4. In May, 1965, Plaintiff was injured in the line-of-duty, and while in City Service. Subsequently, Plaintiff was reinjured in several non-line-of-duty accidents, the last of which occurred in June, 1971.

5. The Department's District Surgeon, assigned Plaintiff to restricted duty in March, 1972 owing to the discomfort and pain Plaintiff was experiencing as a result of his injuries.

6. Plaintiff was examined by Dr. Fielding, a Department Honorary Orthopedic Surgeon in 1973 and 1974. Dr. Fielding was of the opinion that Plaintiff had chronic lumbosacral instability with nerve root irritation and advised the possibility of laminectomy and fusion.

7. Plaintiff was again assigned to restricted duty on December 29, 1974, and was placed on sick report in February, 1975.

8. On March 31, 1975 Plaintiff applied, pursuant to Sections B18-42.0 and B18-43.0 of the Administrative Code of the City of New York (hereinafter referred to as the "Code"), for ordinary or accident disability retirement from the Department.

9. Pursuant to Section 22/2.1 of the Department's Rules and Procedures, a Police Officer on sick report "shall not leave his residence or place of confinement except by permission of his district surgeon or for the purpose of visiting a police surgeon." The District Surgeon concerned may prepare a form (P.B.5) indicating those times during which a Police Officer on sick report may leave his place of confinement.

10. Section 120-1, Page 1, Para. 5 of the Department's Patrol Guide provides: "When sickness or injury would prevent the proper performance of duty: Remain at residence or other authorized location."

11. Plaintiff was initially confined to his residence at all times, seven days a week, other than from 11 A.M. - 2 P.M.

12. After repeated requests by Plaintiff, and a personal plea from an officer of the Patrolmen's Benevolent Association of the City of New York, Inc., Plaintiff's district surgeon, Dr. Stanley August, changed the terms of Plaintiff's confinement to permit him to leave his residence from 6-8 P.M., for meals.

13. X-rays of Plaintiff's lumbar and sacral spines were taken by the Department in 1973 and 1974.

14. Pursuant to Plaintiff's application for disability retirement from the Department, he was examined by the Medical Board of the Police Pension Fund in September, 1975. The Medical Board recommended that Plaintiff's applications for disability retirement be denied.

15. That in August, 1975 Plaintiff received a Department complaint for having been outside of his place of confinement from 6:30 - 7:45 P.M. During this time Plaintiff was being treated in the office of his Orthopedic Surgeon, Dr. John L. Carrington.

16. That in October, 1975, Plaintiff was threatened with a Department complaint by members of the Department's Medical Section, at the orders of the Defendant McClancy, for having left his place of confinement from 10:30 A.M. - 1:30 P.M. on Sunday, October 19, 1975, to attend Church services.

17. In December, 1975, Dr. Peza Hatalil, a Neurosurgeon, reported to the Department that an electro mylogram and nerve conduction studies were performed on Plaintiff at the Downstate Medical Center, and it was recommended that a Myelogram be performed.

18. Pursuant to Dr. Hatalil's recommendation, Plaintiff was admitted to the Brooklyn Hospital on January 5, 1976. A positive lumbosacral myelogram was performed revealing "a very small midline epidural defect at L4-L5."

19. On January 13, 1976 Plaintiff was informed that he was to be served with a Department complaint, at the orders of the defendant McClancy, for having left his residence to enter the Brooklyn Hospital.

20. That by order of the Police Commissioner dated January 13, 1976, the Medical Board of the Police Pension Fund again examined Plaintiff in order to determine his fitness to perform police duty. On March 3, 1976 the Medical Board recommended that a decision on the Police Commissioner's application be deferred pending a review of the actual films of the Plaintiff's myelogram and a further report from Plaintiff's physician, Dr. Carrington.

21. On March 11, 1976, at the orders of the Defendant McClancy, and without prior medical consultation, the Plaintiff's term of confinement was made yet more severe by reducing his daily periods of liberty from five (5) to two (2) hours, thus permitting Plaintiff to leave his place of confinement from only 1 - 2 P.M. and 7 - 8 P.M., seven days a week.

22. The terms of Plaintiff's confinement were increased from 19 to 22 hours daily, seven days a week, because the Defendant McClancy "learned for the first time" that Plaintiff was the Head Coach of the Department's Football Team, and saw his picture in a Department bulletin.

23. That, on March 12, 1976, the defendant Dr. August, annulled Plaintiff's prior M.B.5, and issued a new M.B.5 pursuant to which Plaintiff was con-

fined to his residence at all times, except for a period of two (2) hours daily.

24. That pursuant to Plaintiff's contract of employment with the Department, he was required to perform police duties during an 8.5 hour day, 243 days per year.

25. Since March 11, 1976, Plaintiff has been confined to his residence, where he lives alone, 22 hours a day, 365 days per year. Prior thereto, he was confined 19 hours daily, 365 days per year.

26. That at the orders of the defendant McClancy, and in order to verify that Plaintiff was conforming to the new terms of his confinement, teams of police officers were stationed outside Plaintiff's home.

27. That on March 17, 1976 Plaintiff received a Department complaint for having been away from his place of confinement from 3:25 - 3:45 P.M. on February 14, 1976.

28. Police Officers found guilty of violating the terms of their confinement while on sick report are subject to substantial monetary fines, suspension from employment without pay, and/or dismissal from the Department, with a consequent loss of all pension benefits.

29. On March 18, 1976, Plaintiff presented to the defendant McClancy a letter written by Dr. Carrington outlining Plaintiff's medical history and recommending "conservative therapy including ... swimming daily and walking daily." Based on this letter, Plaintiff requested that the terms of his confinement be made less onerous in order to allow him an opportunity for walks, as a form of therapy. Without prior medical consultation, the defendant McClancy denied Plaintiff's request.

30. That on April 5, 1976, Plaintiff was again examined by the Department's Medical Board pursuant to the order of the Police Commissioner. The Medical Board, after studying the films of the myelogram performed on Plaintiff in January, 1976, found "evidence of a mild filling defect in the midline at the level of L4-5 indicating probability of central disc herniation." Nevertheless, the Medical Board again deferred any decision on the Police Commissioner's application for Plaintiff's disability retirement pending further electrodiagnostic studies and reexamination.

31. Express requests made by the Plaintiff to leave his place of confinement during periods other than from 1-2 P.M. and from 7-8 P.M. have, at times, been denied by the Department. This included a request to leave his place of confinement in the evening to attend an Alcoholics Anonymous meeting.

32. That during more than four hundred (400) days of Plaintiff's confine-

ment, twenty-eight (28) requests made to the Department for special permission to leave Plaintiff's place of confinement have been granted, while several such requests have been refused.

33. Pursuant to the Medical Board's recommendation, electrodiagnostic studies were performed on Plaintiff by Dr. W.T. Liberson of the Brooklyn Hospital on May 6, 1976.

34. On June 2, 1976, the Department's Medical Board reported it again examined Plaintiff pursuant to the order of the Police Commissioner. It was noted that a electrodiagnostic study performed by Dr. W.T. Liberson of Brooklyn Hospital on May 6, 1976, "indicate suggestion of bilateral irritations of the lumbar 5 and sacral 1 roots."

35. Following review of Plaintiff's entire medical records, the Department's Medical Board reported on June 2, 1976 that Plaintiff "is unable to perform full police duty due to a herniated disc." The Medical Board recommended that the Police Commissioner's application for ordinary disability retirement, pursuant to Section B18-42.0 of the Code, be approved.

36. Pursuant to the Medical Board's recommendation, Plaintiff was retired from the Department on June 25, 1976 as medically disabled for the performance of police duty.

37. That by reason of the terms of Plaintiff's confinement, he was denied the opportunity to participate in programs of training and vocational rehabilitation of the University of the State of New York, State Education Department, to which he had been accepted.
38. Plaintiff has never been confined to his residence pursuant to an order or judgment of any state court.
39. That pursuant to Section 891 of the Unconsolidated Laws of the State of New York and Section 434A-14.0 of the Code, a Police Officer may be "removed" from the Department pursuant to a "removal hearing" based upon charges of medical incompetence or malingering, or chronic and extended sick leave which is unsupported by objective medical findings, or for refusing to comply with a Department order to return to work after an application for disability retirement has been disapproved, or for engaging in activities inconsistent with a claimed disability to perform police duties.
40. Plaintiff has never been charged with or otherwise accused by the Department with being medically incompetent, or a malingerer, or with engaging in activities inconsistent with his disability to perform police duties, or with having refused to comply with any Department order to return to work. Medical removal proceedings, under Section 891 of the Unconsolidated Laws of the State of New York, or Section 434A-14.0 of the Code, have never been instituted against the Plaintiff.

Plaintiff, by his attorneys, submits the following statement with regard to allegations contained in the Defendants Rule 9(c) statement, filed on May 21, 1976:

41. With respect to paragraphs "2" through "5", "7", "10", "11", "17", "21" through "24", "26", "28", "32", "41", "42", "47" and "54", admit the allegations contained therein.

42. With respect to paragraphs "1", "6", "8", "12" through "16", "20", "30", "31", "33", "35", "36", "40", "43", "45", "46", "48", "49", "50", "51", "53", "55", and "57", deny the allegations contained therein.

43. With respect to paragraph "38", deny information sufficient to form a belief as to the allegations contained therein.

44. With respect to paragraph "9", admit that Plaintiff was appointed as a Police Officer in the Department on February 15, 1963, but state that he is 34 years of age.

45. With respect to paragraphs "18" and "19", state the terms of Plaintiff's confinement while on sick report at first permitted him to leave his residence only from 11 A.M. - 2 P.M. daily. Thereafter, Plaintiff was permitted to leave his residence only from 11 A.M. - 2 P.M., and from 6 P.M. -

8 P.M. After March 11, 1976, Plaintiff was permitted to leave his residence only from 1 - 2 P.M., and from 7 - 8 P.M.

46. With respect to paragraph "25", admit that Plaintiff requested permission to attend a meeting of Alcoholics Anonymous on April 19, 1976, and that such request was denied. But, deny, that the Department had no record of Plaintiff ever having attended such a meeting previously, or that Plaintiff was not a member of that group or any Department Counseling Group. Further, the defendants' allegations in paragraph "25" are inconsistent with, and clearly refuted by the defendants' own allegations contained in paragraphs "43", "44" and "47".

47. With respect to paragraphs "27", "29" and "52", admit that Plaintiff was Head Coach, President and Founder of the Department's Football Team, but deny that he engaged in any physical activities pursuant to such positions, or otherwise conducted himself in a manner inconsistent with his disability for the performance of police duty.

48. With respect to paragraph "37", admit that on September 17, 1975 the Medical Board recommended to the Department's Board of Trustees of the Police Pension Fund that Plaintiff's application for disability retirement be denied.

49. With respect to paragraph "39", admit that pursuant to the order of the Police Commissioner, Plaintiff was examined by the Medical Board on April 5, 1976, and that decision on the Police Commissioner's application for Plain-

tiff's retirement as disabled, was deferred pending additional medical evaluation.

50. With respect to paragraph "56", admit that the terms and conditions of Plaintiff's confinement have been checked by plainclothes officers in unmarked cars and on foot patrol, and by telephone calls and visits to Plaintiff's place of confinement, but deny that the officers and cars used are not identifiable as police personnel or vehicles.

51. With respect to paragraph "34", admit that the complaint herein was filed on April 26, 1976.

Yours, etc.,

HAROLD B. FRIED
IRA LITTELL, of Counsel

Attorneys for Plaintiff

Office and P.O. Address
186 Montague Street
Brooklyn, New York 11201
(212) 624 - 5775

MEMORANDUM OF DECISION AND ORDER

(Filed October 1, 1976)

(pp. 97a-116a)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -x

JOSEPH A. LOUGHRAN, JR.,

No. 76-C-770

Plaintiff,

- against -

Memorandum of Decision
and Order

MICHAEL J. CODD, et al,

Defendants.

- - - - -x

November 18, 1976

MISHLER, Ch. J.

Plaintiff, a former New York City police officer, brought this action pursuant to 42 U.S.C. §1983 seeking injunctive and declaratory relief, as well as monetary damages, for the alleged deprivation of his civil rights by Police Department officials. Loughran attacks both the facial constitutionality and the arbitrary and capricious application ^{/1} of a Department promulgation that generally restricts a member on sick report to the confines of his residence, permitting him to leave only when authorized by the district surgeon.

Loughran, appointed to the Police Department on February 15, 1963, suffered a line of duty back injury in

^{/1} Section 22/2.1 of the Police Department's Rules and Procedures.

May, 1965 when he broke the fall of a man who had leaped from a train trestle. In late 1970, a non-service connected automobile accident caused re-injury to his back; consequently, plaintiff was assigned to sick report for a period of one month. Loughran returned to duty in January, 1971 only to suffer further injury to his lower back six months later when he fell down a flight of stairs. His aggravated condition caused him to be assigned to restricted duty by the Department's district surgeon in March, 1972. Plaintiff was thereafter examined in February, 1973 and November, 1974 by the Department's orthopedic surgeon. Owing to his physical condition, Loughran was placed on sick report with full pay in February, 1975 and so remained performing virtually no duty until his disability retirement in June, 1976.

Section 22/2.1 of the Police Department's Rules and Procedures provides:

A member of the force on sick report shall not leave his residence or place of confinement except by permission of his district surgeon or for the purpose of visiting a police surgeon... Permission shall

^{/2} While on "restricted duty", a member generally receives light assignments, such as administrative tasks, yet works a full day. An officer on sick report, however, performs no police duties, but continues to receive full pay. Entitlement to unlimited sick leave benefits is open to all Department members.

not be granted for a period of longer than one week. Before granting a renewal of such authorization the district surgeon shall reexamine the necessity therefor...

Pursuant to this provision, Loughran was initially granted permission to leave his residence three hours a day. A plea by union officials later that year to extend plaintiff's hours was denied. But in late 1975, Loughran's personal appeal led the district surgeon to increase the hours of authorized leave; daily he was permitted to be away from his residence between 11:00 a.m. and 2:00 p.m. and from 6:00 p.m. to 8:00 p.m.

During the several months of restriction, Loughran was examined on a weekly basis by the Department's district surgeon, Dr. Stanley August. Plaintiff also sought private care, and received continuous treatment from Dr. John Carrington, an orthopedic surgeon. Further medical evaluation came from the members of the Medical Board of the Police Pension Fund who were responsible for passing on plaintiff's application for ordinary disability retirement.

/3 The only exceptions were in February and March, 1975 when plaintiff reported for restricted duty on two occasions only to return to sick report within two days each time.

In September, 1975, Loughran was examined in connection with his retirement request. Initially finding little credence in plaintiff's claim, the Board denied his application. Later that year, however, pursuant to a consulting neurosurgeon's recommendation, Loughran was admitted into Brooklyn Hospital where a lumbosacral myelogram was performed. It revealed "a very small midline epidural defect at L4-L5." Accordingly, plaintiff's disability application came before the Medical Board for reconsideration, and on January 13, 1976, Loughran was again examined. Decision was deferred pending an actual viewing of the myelogram films by Board members and a further report by Loughran's private physician, Dr. Carrington.

Shortly thereafter, the exact time being unknown, Loughran was certified by District Surgeon August as capable of returning to restricted duty. Plaintiff, who continued to receive outside treatment, sought to controvert the determination and submitted letters from private practitioners indicating their belief in Loughran's inability to return to work. As a result, Loughran continued on sick report, received full pay, and was still permitted to leave his residence only five hours per day.

In March, 1976, it came to the attention of defendant McClancy, the Department's Medical Section Administrative

Officer, that Loughran held the position of head coach of the Police Department Football Team during the tenure of his sick leave. It was McClancy's flat and candid position that plaintiff should be barred from participating in athletic activities that were inconsistent with his status and which might cause further aggravation to his condition. So as to ensure his timely return to service, McClancy summarily ordered plaintiff's hours be curtailed. Defendant August, pursuant to McClancy's unilateral decree, issued the formal dictate on March 12, 1976, reducing permitted leave to two hours per day. Loughran, in response, sought reinstitution of his previous hours by submitting a letter from his private doctor which recommended "conservative therapy including . . . swimming daily and walking daily." McClancy, without consulting either the district surgeon or plaintiff's private doctor, denied the request.

Police surveillance of Loughran's activity increased. Up until this point, plaintiff had been cited seven times for unauthorized leave from his residence. Complaints had issued, and a department trial had been scheduled for May 4, 1976. Defendants contend that plaintiff had also been previously convicted after a departmental trial in July, 1975 for "stealing" unearned vacation time. Owing to the record surrounding

plaintiff's past history and present status, McClancy thought it necessary to periodically send plainclothes officers, both on foot and in unmarked patrol cars, to Loughran's premises and have them check his abidance with the new conditions imposed.

On April 5, 1976, plaintiff was again examined by the Medical Board with respect to his disability application. Board members, after studying the films of the myelogram performed in January, 1976, found "evidence of a mild filling defect in the midline at the level of L4-L5 indicating probability of central disc herniation." Nevertheless, final decision was again deferred pending further "electrodiagnostic studies and reexamination."

Shortly thereafter, defendant August and plaintiff's physician, Dr. Carrington, conferred and both concluded that Loughran should return to restricted duty. Accordingly, plaintiff reported to work on April 12, 1976. However, he rejected the proffered assignment claiming the Department's offer was not in conformity with an agreement to provide him activity consistent with a rehabilitative schedule. Plaintiff, therefore, returned to sick report and remained confined to his home 22 hours per day.

Department scrutiny of Loughran's requests for emergency leave tightened. The Department had long maintained a system under which a member could gain special permission to leave his residence by a showing of good cause to officials manning the Central Sick Desk. During March and April, 1976, plaintiff submitted seventeen such requests; all but three were granted. Loughran was denied permission to attend an Alcoholics Anonymous meeting, a therapy session scheduled at 8:30 p.m. on Good Friday, and a Police Department football game in Atlanta, Georgia. Prior to this, at least four formal and ten informal requests for short term leave had been granted.

On April 28, 1976, Loughran filed this suit alleging a deprivation of his constitutional right to travel and the denial of due process in the arbitrary application of the subject Department promulgation. As well, plaintiff attacked the facial constitutionality of the provision. On June 2, 1976, Loughran was granted an ordinary disability retirement after his condition was diagnosed as a herniated disc. Accordingly, his suit for injunctive relief was withdrawn, but he continues to press his claim for declaratory relief and damages. The matter is now before the court on defendants' motion for summary judgment and plaintiff's cross-motion for the same.

It is Loughran's contention that as a result of McClancy's unilateral actions he has arbitrarily been deprived of the opportunity to engage in a rehabilitative program of physical therapy. Plaintiff argues that under the subject Department regulation, there having been no arrest, no charges brought or allegations made, nor any hearing or judicial order, he is being confined without due process of law. As a result, plaintiff argues, his constitutional right to travel has been unjustifiably curtailed. Depicting the infringement as one of "fundamental rights", Loughran contends only a compelling state interest will serve to justify the significant encroachment, adding that only the least restrictive alternative should be judicially tolerated.

Defendants, in turn, rely on the reasonableness of the provision in question. Noting that every member of the Department enjoys unlimited sick leave with full pay, it is the defendants' position that the liberality underlying sick leave benefits commands that a mechanism be established to prevent abuse and foster the expeditious return to duty. Defendants contend that the Police Department, in the dispatch of its own internal affairs, should be accorded wide latitude by the courts; judicial intervention, it is argued, is not

warranted where administrative policy and practice is neither arbitrary nor irrational.

Whether the restrictions imposed are a constitutionally impermissible abridgement on plaintiff's right to travel is the threshold question that must be examined. While the right to travel has repeatedly been recognized as a basic constitutional freedom, Dunn v. Blumstein, 405 U.S. 330, 92 S.Ct. 995 (1971), Shapiro v. Thompson, 394 U.S. 618, 89 S.Ct. 1322 (1968), its exercise is not without certain limitations. The proper standard against which any limitation must be evaluated, in assessing its validity under the due process clause, is a function of the cost the restriction may tend to impose on the exercise of the right. Only when the restriction serves to "penalize" the practice of this constitutional freedom must the state proffer a compelling reason in order to justify the infringement. Memorial Hospital v. Maricopa County, 415 U.S. 250, 257-258, 94 S.Ct. 1076, 1081 (1974).

Loughran alleges that the restriction imposed by Department officials resultingly precluded his participation in necessary physical therapy and rehabilitation programs. Facially, plaintiff's allegations implicate the denial of a "necessity" that might be construed a "penalty." Memorial

Hospital v. Maricopa County, supra at 259, 94 S.Ct. at 1082. The terms of confinement, allegedly imposed under the threat of penalty or dismissal, arguably extracted a price on the free exercise of the right to travel, i.e., the denial of medical treatment. At first blush, therefore, it would seem that a compelling state interest must be shown if the restrictions are to be found constitutionally permissible.

Yet we must remain mindful of the capacity in which plaintiff brings this suit. Loughran seeks the court's protection not as an ordinary citizen, but as an employee of the New York City Police Department. The distinction is a marked one, for the City, as an employer, retains unique interests in regulating the activities of its own employees that are simply not evident with the regulation of the general populace.

Kelley v. Johnson, ____ U.S. ____, 96 S.Ct. 1440, 1444-45 (1976), citing Pickering v. Board of Education, 391 U.S. 563, 568, 88 S.Ct. 1731, 1734 (1968). All department members enjoy unlimited sick leave with full pay. A restriction on the permissible number of annual days, evident in most police departments across the nation, is not imposed on New York City officers. Accordingly, some restrictions on the activity of a member on sick report are wholly necessary if malingering is

to be minimized and abuse curtailed. Gissi v. Codd, 391 F.Supp. 1333, 1336 (E.D.N.Y. 1974). Department officials should rightly have available an effective means by which to verify the legitimacy of an officer's disability claim and the necessity for his absence from duty. The subject promulgation is directed at this end; the purpose it serves is to ensure that a disabled member performing no duty does not partake in activity that is inconsistent with his status and which might undermine his expeditious return to service.

The uniqueness of the city's interests and its consequent choice of alternatives by which to protect those interests are entitled to a presumption of legislative validity. Kelley v. Johnson, 96 S.Ct. at 1445-46. Traditionally, government agencies have been granted the widest latitude in the dispatch of its own affairs. Rizzo v. Goode, _____ U.S. _____, 96 S.Ct. 598, 608 (1976). Hence, the compelling-state-interest test, which would be properly employed in the context of a civilian complaint, should play no part where the challenge is by a city employee and is directed at an agency's internal policies. Rather, the proper standard of evaluation, in keeping with the caveat that warns against judicial intervention into administrative policy making is whether the promulgation

enacted ". . . is so irrational that it may be branded 'arbitrary', and therefore a deprivation . . ." in due process terms of Loughran's constitutional right to travel. Kelley v. Johnson, 96 S.Ct. at 1446.

The rationality of the subject restriction can hardly be questioned. The city, in affording the most liberal sick leave benefits to its police officers, maintains a scheme riddled with potentialities for abuse. Department officials are faced with a multi-dimensional management problem. Not only must they track the individual rehabilitative progress of the disabled member and foster his expeditious return to duty, but they must, in the larger context, encourage Departmental efficiency and soothe the additional burdens imposed on working officers caused by their colleague's absence. As such, the regulation serves to promote morale by minimizing "gold-bricking" thereby assuring that each officer carries his fair share of the workload. Moreover, although the government's interest in maintaining fiscal integrity, by itself, is not decisive of due process claims, we must be cognizant of the strangulating financial conditions that prevail. Siletti v. New York City Employees' Retirement System, 401 F.Supp. 162, 168 (S.D.N.Y. 1975). Each city agency owes a duty to the

public to avoid wasteful spending and provide competent services. We find, therefore, the subject restriction to be manifestly reasonable.

Considering, as we must, the burden imposed on plaintiff in having to abide by the terms of the Department's order, we can only conclude that in light of the legitimate state interest intended to be served by the promulgation, it cannot be said to facially have violated Loughran's substantive due process rights. It does not appear from the evidence that plaintiff's therapeutic opportunities were substantially impeded by the operation of the regulation. When Loughran was initially authorized to depart his residence three hours a day, he argued that it did not permit the daily walking and swimming that his condition required. Yet Loughran offered no reason why the permitted hours were insufficient beyond his flat assertion. Mere walking does not require wide open terrain, and a short term daily swim could easily have been fit into his non-regimented schedule.

Loughran was seen weekly by the district surgeon who must have been acutely familiar with Loughran's medical progress. Dr. August was clearly in a position to evaluate plaintiff's rehabilitative needs and authorize an accommo-

dating schedule. However, he found Loughran capable of returning to restricted duty, a determination later confirmed by plaintiff's private physician, after he consulted with Dr. August in April, 1976. Other than plaintiff's bald assertion that the proffered duty assignment was not "consistent with any rehabilitative schedule" (complaint ¶30), no concrete reason is offered for Loughran's failure to return to restricted duty. If he could as coach simply stand and direct player activity during a Department football team practice, assuming that ~~is~~ all he did, little reason exists why he could not perform stressless administrative services that restricted duty would entail. Moreover, his return to restricted duty would have ended the terms of the Department order confining him to quarters rendering him free to engage in whatever rehabilitative program he wanted during off duty hours.

Plaintiff's claim that a compelling-state-interest test must be applied in assessing the regulation's constitutional validity is without merit. Loughran tries to distinguish Kelley arguing that there only the contours of the fourteenth amendment were implicated by the Police Benevolent Association's challenge to department "hair regulations", and not the more fundamental rights like the one at issue here.

While the Court in Kelley did admit that the liberty interest in matters of personal appearance was distinguishable from more fundamental rights such as those of procreation, marriage and family life, and that it was still an open question as to whether grooming choices were protected by the fourteenth amendment, the Court did assume for decision purposes that it was a right falling within the protections of the due process clause and announced the "irrational-arbitrary" test accordingly. Kelley v. Johnson, 96 S.Ct. at 1444.

Plaintiff's reference to Garrity v. New Jersey, 385 U.S. 493, 87 S.Ct. 616 (1967), in support of his contention that certain constitutional rights cannot be conditioned by the exaction of the price of employment, is inapposite. While we agree that the state cannot condition employment on the relinquishment of constitutional rights, this does not mean that they may not impose restrictive regulations that satisfy requirements of substantive due process. The Court made it perfectly clear in Kelley that its language in Garrity suggesting that "policemen . . . are not relegated to a watered down version of constitutional rights", Garrity v. New Jersey, supra at 500, 87 S.Ct. at 620, did not mean that the claim of a city employee must be treated on the same constitutional plane as a private citizen's challenge. Kelley v. Johnson,

96 S.Ct. at 1446. The dichotomous use of dual standard of analysis, the choice of test depending upon the character of the challenger, is wholly justified by the unique interests surrounding the regulation of a city employee. The methods employed by the Police Department, therefore, should not be the subject of unnecessary judicial scrutiny when the court is not in the position to weigh policy arguments in favor and against the regulation. The Department should be given reins to choose the managerial system it wants, as long as a rational basis is shown, without judicial oversight and intervention into its disciplinary affairs. We find, therefore, that Department officials, having shown a rational basis for the implementation of the subject restriction, have not violated Loughran's substantive due process rights.

Loughran alternatively argues that resort to summary confinement procedures, enabling Department officials to side-step the more burdensome hearing requirements mandated when dismissal is sought for malingering, violates plaintiff's rights to procedural due process. Plaintiff contends the absence of procedural safeguards, regardless of how attractive the ends served by the restriction, is per se unconstitutional. Confinement under the threat of penalty or dismissal, it is argued, may not be constitutionally

effected at the particular whim of either the district surgeon or medical section commander. Plaintiff's contentions must be rejected.

What serves to satisfy the requirements of procedural due process in any given case depends upon the nature of the proceedings involved and the rights therein that may be affected. Cafeteria and Restaurant Workers Union v. McElroy, 367 U.S. 886, 895, 81 S.Ct. 1743 (1961); Siletti v. New York City Employees' Retirement System, supra at 167. Whereas minimum requirements demand notice and some sort of review. Goss v. Lopez, 419 U.S. 565, 579, 95 S.Ct. 729 (1975), it by no means follows that a trial type hearing is required. Surely no such proceeding is necessary where it is of questionable benefit.

To argue, as plaintiff does, that implementation of the confinement order is permeated by whimsical decision making is shortsighted. Loughran, who was examined by the district surgeon weekly, had his case reviewed after each visit. Clearly Dr. August was in the best position to evaluate plaintiff's medical progress and appreciate his rehabilitative needs. The five hours leave initially authorized represented a balance between the need to promote Loughran's

expeditious return while providing him free time to pursue a rehabilitative schedule. The schedule was not rigid; additional time was allowed plaintiff to receive private treatment from his outside physician. Only a single request for emergency leave to undergo therapy was denied, and the circumstances surrounding that request were suspect. Moreover, Loughran was permitted and in fact did challenge Dr. August's determination with letters from his private physician. To argue that weekly review of plaintiff's case was anything but manifestly sufficient is unreasonable. A trial type hearing would serve no purpose where questions of credibility would not likely arise, where plaintiff's interest in cross-examination was minimal, and plaintiff failed to show just what additionally he would be able to prove if afforded a hearing. Siletti v. New York City Employees' Retirement Association, supra at 167-168.

Loughran's allegation that defendant McClancy's unilateral decision in March, 1976 to further curtail his hours represented a capricious and constitutionally violative determination is likewise without merit. Well before McClancy's order Loughran had been deemed fit to return to restricted duty. Yet plaintiff made no attempt to perform even the lightest of administrative duties; he continued to assert

his inability to work. Quite inconsistently, however, Loughran saw himself fit enough to continue functioning as head coach of the Department football team. Even assuming these duties required no strenuous activity, plaintiff's claims appeared to be mutually exclusive. Hence, McClancy's suspicions were justifiably aroused. District Surgeon August seemingly agreed, and he issued the formal dictate. Their decision to impose more restrictive conditions can hardly be considered arbitrary when, less than one month later, Loughran's own personal physician conferred with Dr. August and agreed plaintiff was able to undertake light work.

Furthermore, plaintiff's procedural due process claim is wrongly premised. Loughran, in the true sense of the word, was not "involuntarily" confined. He held the key to free movement; at any time he could have chosen to return to restricted duty and avoid the reaches of the subject provision. Plaintiff could only have been penalized or dismissed for violation of the confinement order. If charges were brought, Loughran then would have been accorded a trial type hearing.^{/4} Such a scheme which provides for weekly review of

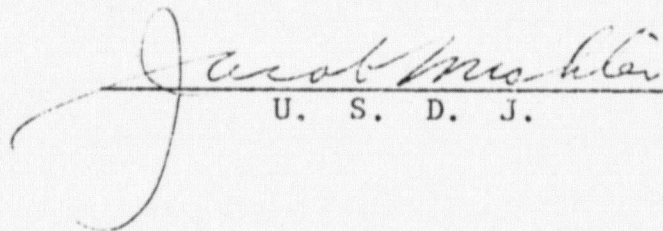
^{/4} Loughran was in fact cited seven times for violating the confinement order and complaints issued. A disciplinary hearing was originally scheduled in May, 1976, but was postponed pending decision on Loughran's retirement application. When plaintiff was granted an ordinary disability retirement, the matters were rendered moot.

a member's medical progress before the imposition of restrictions and for a trial type hearing when an officer is cited for violating a confinement order satisfies the requirements of procedural due process.

Accordingly, for all the reasons heretofore cited, defendant's motion for summary ~~judgment~~^{judgment} is granted and plaintiff's cross-motion for the same is denied.

SO ORDERED.

The Clerk is directed to enter judgment in favor of defendants and against plaintiff, dismissing the complaint.


U. S. D. J.

JUDGMENT (Filed November 19, 1976)

117a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NOV 19 1976

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	:	
JOSEPH A. LOUGHRAN, JR.,	:	
Plaintiff,	:	
-against-	:	JUDGMENT
MICHAEL J. CODD, et al,	:	76-C-770
Defendants,	:	
	:	
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A memorandum and order of Honorable Jacob Mishler, United States District Judge, having been filed on November 18, 1976, granting the defendants' motion for summary judgment and denying the plaintiff's cross-motion for summary judgment and directing the Clerk to enter judgment in favor of defendants and against the plaintiff, dismissing the complaint, it is

ORDERED and ADJUDGED that the plaintiff take nothing of the defendants and that the defendants' motion for summary judgment is granted, the plaintiff's cross-motion for summary judgment is denied and the complaint is dismissed.

Dated: Brooklyn, N.Y.
November 18, 1976

Lewis Orgel
Clerk

APP
FEDERAL COURT OF APPEALS
SECOND CIRCUIT

JOSEPH A. LOUGHRAN, JR.,
Plaintiff-Appellant,

Index No.

- against -
MICHAEL J. CODD, ind., as Police Comm. of Police
Dept. of City of N.Y., and as Exec. Chairman of Bd. of
Trustees of the Police Pension Fund, Art. II, GEORGE MC CLANCY,
ind, and as Admin. Off, Med. Sec. NYC Police Dept.
STANLEY AUGUST, ind, and as Dist. Surgeon of the
N.Y. City Police Dept.
~~Defendants-Appellees.~~

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

I, Victor Ortega, being duly sworn,
depose and say that deponent is not a party to the action, is over 18 years of age and resides at
1027 Avenue St. John, Bronx, New York

That on the 3rd day of Feb 1977 at Municipal Building
New York, N.Y.

deponent served the annexed *Suit app'd* upon
W. Bernard Richland

the in this action by delivering a true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the Attorney(s) herein,

Sworn to before me, this 3rd
day of February 1977

Robert T. Brin

Victor Ortega
VICTOR ORTEGA

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977